"POPULAR SOVEREIGNTY."

THE REVIEWER REVIEWED.

BY A SOUTHERN INQUIRER.

A paper entitled "Observations on Senator DOUGLAS' Views on Popular Sovereignty, as expressed in Harpers' Magazine for September, 1859," recently appeared in the *Washington Constitution*. It was heralded by the "Official Organ" as "a powerful vindication of the true Democratic doctrine," and generally understood in political circles to be the production of a high public functionary. We trust that this may not be so, for this "masterly pamphlet," as the *Constitution* pronounced it, will neither add to the reputation of its author as a jurist, nor confirm his character as a man of candor and fairness. We shall make this manifest, we think, before we get to the end of our chapter.

Mr. DOUGLAS states that differences of opinion in respect to slavery in the Territories exist in the Democratic party, and describes those differences of opinion under the following classes:

"*First.* Those who believe that the Constitution of the United States neither establishes nor prohibits slavery in the States or Territories beyond the power of the people legally to control it, but leaves the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.

"*Second.* Those who believe that the Constitution establishes slavery in the Territories and withholds from Congress and the Territorial Legislature the power to control it, and who insist that, in the event the Territorial Legislature fails to enact the requisite laws for its protection, it becomes the imperative duty of Congress to interpose its authority and furnish such protection.

"*Third.* Those who, while professing to believe that the Constitution establishes slavery in the Territories beyond the power of Congress or the Territorial Legislature to control it, at the same time protest against the duty of Congress to interfere for its protection; but insist that it is the duty of the judiciary to protect and maintain slavery in the Territories without any law upon the subject."

Our pamphleteer, knowing the difficulty of reconciling these "radical differences of opinion," which, it is undeniable, do disturb Democratic harmony, and fearing to enroll himself with either the second or the third class, adroitly passes both over, to war upon opinions which come within the first. He did not dare to meet the issue squarely, and so, as other great men have done before him, taking discretion to be the better part of valor, he avoids it, and discusses but one branch of the subject. The interventionist who insists on the dogma of Congressional protection to slavery in the Territories, and those who hold that the slave owner is entitled to protection, but resolutely oppose intervention under the specious plea that it is unnecessary because the judiciary can give it, are thus banded together in a common cause. These opposing forces, between whom there is no harmony whatever, inasmuch as each considers the other heretical, are the power by which Senator DOUGLAS is to be excommunicated from the Democratic party. The Abolitionist of yesterday, who has scarcely emerged from

the wreck of the "Buffalo Platform," and the hot Southern extremist who denounced the Compromise Measures of 1850, may strike hands, and hunt in couples to put down the man who, above all others of his section, has stood by the national flag, and perilled place and position in vindicating the compromises of the Constitution. They are both in fellowship with our pamphleteer, who enlists with alacrity all, whatever their opinions or however conflicting, who will unite in the crusade against DOUGLAS and his opinions. He assails him in the *Constitution*, and scatters the poison in pamphlet form over the country, while here and there a heated, headstrong partisan in the South proclaims hostility to the nomination at Charleston, in the event of Mr. DOUGLAS being the choice of the Convention. And to complete the fraternity, Lincoln and Trumbull, who are just now missionaries to the Republicans of Ohio, cry out "anathema" also. Hear Mr. Trumbull at Cleveland on the 15th, and Mr. Lincoln at Columbus, on the 16th of September, 1859, and note how cordially they agree with the pamphleteer in denunciation of Popular Sovereignty. There is no "irrepressible conflict" between them; they are faithful allies, marching under different colors in the same direction and with a common purpose.

Extract of a sketch of Senator Trumbull's speech at Cleveland, taken from the New York Tribune.

"The speaker denounced *Popular Sovereignty as a cheat, as impracticable, and as subversive of the Constitution if carried out.* It was a mere catchword, and not intended for actual use. The government of this country was not a Popular Sovereignty one. The popular majority system ruled in the House, but was checked by the Senate and Executive. The doctrine that Popular Sovereignty should absolutely rule, was, therefore, revolutionary. *Its adoption in a Territory would clothe the Territory with greater powers than possessed by a State.* Senator Trumbull went on to show the fallacy of the Popular Sovereignty doctrine, and that it has never been acted on since the formation of the Union. Douglas himself acted in violation of it at the annexation of Texas, by his resolution prohibiting slavery in the new States to be carved out of the Territory north of 36° 30′. The Dred Scott decision in regard to Territorial power over slavery was then confuted. The Douglas Democrats cry non-intervention, but in repealing the Missouri compromise they set the example of intervention, and violated the pledges made in that compromise."

Extract of a speech of Abraham Lincoln, at Columbus, Ohio.

"He would not weary his audience with following up the tortuous windings of a Presidential aspirant in his struggle to secure electorial votes from both sections, but would call attention to the moral phase of the conflict now going on. *Had this people reflected upon the debauching influence of Douglas Democracy upon the popular mind?* Did they realize that it was preparing the country to acquiesce in the reopening of the African slave-trade? Douglas says the people of the Territories have a right to slave property. By a parity of reasoning, the people of Georgia have a right to slaves, and to buy them in Africa if most profitable to adopt that market. The Illinois Senator may shrink, as he has shrunk, from the application of his doctrine, by stating that the compromises of the Constitution oppose the repeal of the law prohibiting the foreign slave-trade. But tell me, tell me, any Douglas Democrat, if there is in the Constitution any compromise more likely to prevent the reopening of the slave-trade than the same compromises were to confine slavery to the original slave States."

THE LAW WHICH PROTECTS SLAVERY IN THE TERRITORIES.

It is admitted that the Constitution "does not establish slavery in the Territories," but denied that anybody in this country "ever thought or said so." Those who discard the doctrine that the people of the Territories should decide all questions connected with their domestic affairs for themselves, do not contend, it is true, that the

Constitution in *express terms* establishes slavery in the Territories. They claim that it exists therein "by virtue of" that instrument. The ground of this claim is, that the Territories are open to settlement; that every man has a right to carry his property with him; that slaves are property, and recognized and protected as such, in the clause which relates to fugitives, by the Constitution. Thence follows the deduction, that the slave owner is entitled to protection for his property in the Territories, the same as the laws of the several slave-holding States provide. In what mode that protection can be secured is the distracting question in the differences of opinion in the Democratic party on the subject of slavery in the Territories.

The claim, in other words, is, that the local law creates the relation of master and slave, which the Constitution recognizes, and, consequently, that the local law and the Constitution, each covering the right of the master to the services of his slave, travel together into the Territories. In that form, and by that mode, it is said that the Constitution establishes slavery, or, to adopt the modified phrase of those who contend for the doctrine, slavery *exists* in the Territories "by virtue of the Constitution of the United States." Now, as the existence of a thing necessarily springs from its establishment, introduction, or creation, if slavery exists in the Territories by virtue of the Constitution, it is fair to claim that it is thereby established. A play upon words amounts to nothing; it is the substance we are after, and we do not intend to pursue shadows. To establish means no more than to fix, to settle, to build up; and therefore, we repeat, those who insist that slavery exists in the Territories by virtue of the Constitution with no local law to support it, are precisely those who may say properly that the Constitution does establish slavery in the Territories.

The proposition of our pamphleteer, stripped of its artful verbiage, is substantially the same as that to which we have just referred. It is this: "The Constitution recognizes slavery as a legal condition wherever the local governments have chosen to let it stand unabolished, and regards it as illegal wherever the laws of the place have forbidden it. A slave, being property in Virginia, remains property; and his master has all the rights of a Virginia master wherever he may go, so that he go not to any place where the local law comes in conflict with his right. It will not be pretended that the Constitution itself furnishes to the Territories a conflicting law. It contains no provision that can be tortured into any semblance of a prohibition."

To bolster up this proposition, the right of the Territorial Legislature to pass a law in conflict with the law under which the slave was held to service in Virginia, is, of course, denied. Of this, more hereafter. Meanwhile, let us concede that the proposition which is here put is correct, and what then? How is slavery thus introduced into the Territories to be regulated, and where is the protection of the owner? Where is the master's remedy if his slave be enticed or carried away, or harbored and concealed within the Territory after escape from his service? How are runaways to be arrested, confined, and restored, and by what means are sheriffs, constables, and other officers to be compelled to aid and assist in their capture, detention, and restoration? And how can those officers be punished if they refuse to aid

and assist the master under such circumstances? How will slaves be protected from maltreatment by their masters; and if injured by others, how will their masters mulct the wrong-doer? The Constitution certainly provides for no such exigencies, nor do the laws of the United States. Without laws applicable to such cases as we have enumerated, and many others similar, every man familiar with the institution of slavery in the States knows, that slave property is of no value. The right to take slaves into a Territory, which is clearly a right, without laws for their discipline and protection, is a barren right; a right which no owner of slaves would be silly or reckless enough to exercise. Hence, the claim is set up that there must be adequate protection to slave property in the Territories, and that wherever the Territorial Legislature is passive or unfriendly, Congress must step in and pass the necessary laws. This, the absence of laws protecting slaves as property—the absence of both federal law and local law, is what Mr. DOUGLAS means when he says that some "insist that it is the duty of the judiciary to protect and maintain slavery in the Territories *without any law* on the subject."

If there be law in the Territories, independently of any regulation by statute, "which will secure the right of a master to the services of his slave," as is asserted, why does not our author put his finger upon it? The South demands, and has the right to demand, if it exists therein by virtue of the Constitution of the United States, "adequate protection" to slavery in the Territories. If that protection be already provided, notwithstanding the "unfriendly legislation" which Kansas has inaugurated in the repeal of the act of September, 1855, "to punish offences against slave property," and there be no necessity at any time, nor under any circumstances, for a "Federal Slave Code," why does not he give us the law? Why hold back, and let strife and bitterness distract our councils? What law is it under which the slave owner can find protection for his property in slaves in the Territories? It is not the civil law, because the doctrine of the civil law, universally held, is, that slavery can only exist where it is recognized or established.—(1 *Phillimore on International Law*, 335, 344; *Burge's Col. and For. Law, vol.* 1, *p.* 739.) If this were not so, that provision of the Kansas-Nebraska Act known as the "Badger Proviso" declares, that no law or regulation which may have existed in those Territories prior to March 6, 1820, "either *protecting*, establishing, prohibiting, or abolishing slavery," shall be revived or *put in force*. It is not the common law, because it has been decided over and over again in the courts of England, and of our own country, that slavery has its sanction and recognition, not in the common law, but in the municipal regulations of particular States. Slavery was not upheld by the common law in the Colonies prior to the Revolution. It was introduced by the regulations of the mother country, of which the courts in the Colonies were bound to take notice, just as the courts of the several States are bound to take notice of the regulations of the general government. (Davis *vs.* Curry, 2 *Bibb's Ky. Rep.* 238; Case of the slave Grace, 2 *Hagg. Ad. Rep.*, 109; *Brougham's Colonial Policy*, 2, § 1.) Thus the laws of Virginia, from 1669 to 1772, to restrain the importation of slaves into that colony were negatived by the Crown; and the act of Pennsylvania

"to prevent the importation of negroes and Indians" into that Province, which was passed June 7, 1712, was repealed in the Queen's Council February 20, 1713. (2 *Tucker's Black.*, *Append.*, 49, 52; *Prov. Laws of Pa.*, *chap.* 209; 1 *Burge's Foreign and Colonial Laws*, 737, *n.*)

If the master's right to "the services of his slave in a Territory" be protected, and can be maintained under the common law, show us the rule; give us the decision. "To the law and to the testimony," that we may confound "false oracles," and put this vexed question of Congressional intervention at rest. Do not point, however, to the opinion of Talbot and Yorke to the British merchants in 1739, that slaves did not become free by being brought into England from the West Indies, and might be compelled to return to the Plantations. Do not carry us back to 1677, to the 29th year of the reign of Charles II, and point to the case of Butts *vs.* Penny, (2 *Levinz*, 201; 3 *Keble*, 385,) nor to 1749, the 22d of the Second George, to the case of Pearne *vs.* Lisle, (*Ambler's Rep.*, 75,) wherein it was decided that trover would lie for a negro. African slaves were made merchandise in London, and publicly sold, we all know, prior to 1772, the date of the decision in Somersett's case. That is a historical fact; but it does not determine whether slavery is accordant with the common law, nor that its rules will at this day, in the absence of statutory regulations, afford adequate protection to the slave owner in the Territories of the United States. The common law gave no sanction to the practice; but by her laws encouraging the slave trade with the Colonies of the Crown, Great Britain had licensed merchandise in slaves; and though slaves were sold in London without molestation, they were sold in violation of the principles of the common law. Holt, who, with the other judges, certified his opinion to the King's Council in 1689, that negroes were merchandise, decided in 1705, in Smith *vs.* Brown and Cooper, (2 *Salk*, 666; *Holt's Rep.*, 495,) "that as soon as a negro comes into England he becomes free, and that "one may be a villein in England, *but not a slave.*" So colliers, coal-heavers, and salters, were, by the construction of the courts, bound to the collieries and salt-works in Scotland for life; yet, the Lords of Session judicially determined, in 1778, (Knight *vs.* Wedderburn,) that a negro who was a slave in Jamaica did not continue a slave in Scotland, and could not be taken from the country against his consent.

The question which the South wishes settled is, the Supreme Court of the United States having decided, as is alleged, that slavery exists in the Territories "by virtue of the Constitution of the United States," how shall slave property be protected? It cannot be answered by recourse to black letter decisions long ago overruled, nor by unmeaning generalities, nor by round assertion, however boastingly made. The courts will grant protection, the courts will enforce "the right of a master to the services of his slave in a Territory," we are graciously told, but how, we are left in profound ignorance. The courts in the Territories are not known to the Constitution, nor do they derive their jurisdiction therefrom, but from the Territorial Legislature under the Organic Act of each Territory. How, then, unless jurisdiction be conferred and laws passed to that end, can the

Territorial courts punish offences against slave property, or make the slave obedient to the authority of his owner who removes from Virginia, Kentucky, or Maryland? The answer will be as it usually is, we presume: there are laws for the protection of property in all the Territories, and those laws will apply to and protect slaves equally with "ox chains," horses, and other property. Not so; slaves are property "by virtue of some local regulation," as our pamphleteer acknowledges, and without such "local regulations," recognizing, fixing, and defining property in slaves, which the Supreme Court of the United States itself, in the case of the Antelope, (10 *Wheaton*, 121,) says are property not by the law of nature but of "force," the master can have no other protection than such as the law of force provides. Our Colonial ancestors full well understood this, and hence in all the Colonies such "local regulations" were ordained as are necessary to the discipline and protection of the institution of slavery. The Southern States understand it to-day as the Colonies understood it; and while there are general laws in all of them with respect to property, they have preserved, with such alterations as time and circumstance suggest, the Colonial policy of special legislation for property in slaves. Thus manifesting to the world that property in slaves by the juridical action of the Southern States requires laws and regulations for its recognition, protection, and enjoyment, different from laws governing other chattels—laws special in their character and relation.

The Provincial laws of Maryland, which are, for the most part, still in force, will illustrate what we have said of laws regulating slavery. The precise date of the introduction of negro slaves into Maryland is not known, but it was probably within a few years after the founding of the Colony in 1634. The word "slave" occurs for the first time in a bill which was read twice, but never passed, in the second General Assembly, in 1638:—"An act for the liberties of the people," in which they are denominated, "all Christian inhabitants, *slaves* only excepted." The act of 1663, chap. 30, fixed slavery, however, as a domestic institution of the Province, and was followed by enactments from time to time against runaways, and such as shall entertain them; restraining the frequent assembling of negroes; to prevent the enticing, transporting, or carrying away of slaves; to prevent tumultuous meetings; regulating passes, and for the punishment of offences committed by slaves, and other laws of similar character down to 1776. The act of 1663, "An act concerning negroes and other slaves," provided that "all negroes or other slaves within the Province, *and all negroes and other slaves to be hereafter imported* into the Province, shall serve DURANTE VITA; and all children born of any negro or other slave *shall be slaves, as their fathers were,* FOR THE TERM OF THEIR LIVES." (Cited in Butler *vs.* Boarman, 1 *Harris & McHenry*, 37.) An act of the Province of South Carolina of 1740, (7 *Statutes at Large, p.* 397,) and an act of Georgia of 1770, (2 *Cobb's Digest*, 971,) contain a similar provision as that of the Maryland act of 1663, declaring who are and shall be slaves, and that all "issue and offspring" shall "follow the condition of the mother." The legal effect of these Provincial laws was as strong as if it had been enacted in so many words in each Colony,

"slavery shall be and hereby is established." They made slavery legal by statute. They ingrafted it upon the Colonies as firmly as any statute to establish it could, and subsequent laws have only continued as property slaves which those early laws declared should "remain forever hereafter absolute slaves."—(*South Carolina and Georgia Laws.*)

Now, when the South is assured that the laws of property in the Territories are ample for the protection of slave property also, the South has but to hold up the statutes of the Southern States—those of Delaware, Maryland, Virginia, the Carolinas, and Georgia, having their origin in the Colonial days of slavery—and ask, "if this be so, why were these laws specially enacted? If this be so, why refuse to 'make assurance doubly sure,' and give us that statutory protection which you concede to be our right by virtue of the Constitution?" No, no, this is all pretence—the last resort of political time-servers and expediency men to escape the responsibility of oft-repeated declarations which they dare not withdraw or deny.

THE AXIOMATIC PRINCIPLE OF PUBLIC LAW.

The "axiomatic principle of public law," stated by our author, so far as it relates to marriage, divorce, ligitimacy, and majority, relations depending on personal laws, which are called by jurists also universal, is entirely correct. Those relations once legally attached are not affected by a change of domicil—they extend everywhere. The relation of husband and wife, and parent and child, although modified and regulated thereby, is not founded upon the municipal law. Slavery is not like the natural and social relations which are everywhere recognized. It is idle to attempt to trace any such resemblance. Judge Ruffin, in The State *vs.* Marion, (2 *Devereux's Rep.*, *p.* 255,) disposed of this question summarily, and it is singular that at this day any one familiar with the institution and the laws which govern it should classify slavery with the domestic relations which are regulated by personal laws having judicial recognition in every forum by reason of their universality. That distinguished jurist, in the case referred to before the Supreme Court of North Carolina, said: "The relation of slavery is not like other domestic relations, such as parent and child, tutor and pupil, master and apprentice. There is no likeness between the cases. They are in opposition to each other, and *there is an impassable gulf between them.* The difference is that which exists between freedom and slavery, *and a greater cannot be imagined.*" If slaves were property, or slavery had its foundation in those personal laws which are universal, slavery would undoubtedly be recognized in a State or country whose laws are hostile to it, by virtue of the municipal law of the master's domicil whereby slaves are property. This is the principle contended for by Cobb in his "Law of Slavery," but the author only applies the principle to the temporary residence of the master in a Free State. (§ § 136, 137, 154.) Whether this be the law or not, it is certain that it is not recognized in the Free States; and as Justice Woodbury well remarked in Vanzandt *vs.* Jones, (5 Howard, 229,) the right of the

master to reside temporarily in such States with his slaves, if it be admitted, must rest upon the law of comity. Such a law of comity no judicial tribunal can apply unless the State first determines the rule of right for its action. That this right ought to be conceded and protected by the free States it is unnecessary to consider, inasmuch as their laws and judicature sternly oppose it, and there is no way of coercing a more friendly policy.

That the axiomatic principle of which we treat is inapplicable to slavery is easily demonstrated by an appeal to that public law from which our pamphleteer professes to borrow it. Judge Story, in his "Conflict of Laws" says: "*There is a uniformity of opinion among foreign jurists and foreign tribunals in giving no effect to the state of slavery* of a party, whatever it might have been in the country of his birth, or of that in which he had been previously domiciled, *unless it is also recognized by the laws of the country of his actual domicil, and where he is found, and it is sought to be enforced.*"—(§§ 96, 104.) He cites Christinæus, Groenewegen, and Causes Celebres, vol. 13, in support of his opinion. It will not do to say that Judge Story was "prejudiced against slavery," and, therefore, not reliable authority on such questions. In the first place, it is not true that his "prejudices against slavery," whatever they were, ever clouded the judgment or warped the mind of Story. His works and his decisions completely confound such an unjust suspicion. Look at his "Conflict of Laws" and "Commentaries on the Constitution;" his Opinion (the Opinion of the Court,) in *Prigg* vs. *the Commonwealth of Pennsylvania,* and his full endorsement of the decision of Lord Stowell, in the case of the slave Grace: no "prejudice against slavery" is manifested or found lurking there. In the second place, Birge's Commentaries on Colonial and Foreign Law (1, pp. 739, 740, 744, 749,) and Phillimore's International Law (1, pp. 335, 344,) lay down the same doctrine.

Cobb, in his "Law of Negro Slavery," undertakes to set aside the law as Story states it, but does not, as we can perceive, in the least disturb it. From him Mr. DOUGLAS' reviewer has evidently taken his axiomatic principle, which, so far as slavery is concerned, rests chiefly upon the authority of Vinnius, a Dutch lawyer who wrote in 1642. Conceding the authority to be reliable, an axiomatic principle of public law which has its foundation in the consent and practice of nations, and not in the speculations of men, could not be thereby established. A recent work of great research and ability ("The Law of Freedom and Bondage," by John C. Hurd,) in which the effect of the law of domicil on the *status* of a person in another country is elaborately treated, says: "But no one exception to this rule is *more harmoniously recognized* than this, that the condition of involuntary servitude established by the law of domicil will not be recognized in another independent Territory *wherein such a condition is unknown to the local law.*"—(*Note* 1, p. 109, where Savigny, Wœchter, Schœffner, and Fœlix, of the foreign jurists are cited, and in *note* 1, p. 277 Van Lewen, Gudelin, Grotius, and Zypœ.)

It is not necessary, however, to travel back centuries to pick up the opinions of foreign jurists, nor yet to rely upon the opinions of more modern civilians, in order to arrive at the rule whereby slavery is governed

in the United States. The Constitution is a better guide than these, and the decisions of our courts are of higher authority than the chance expressions of publicists as to the *status* of feudal vassals, when vassalage was common to Europe. The Constitution, acting upon African slavery itself, recognizes slaves as property, and fixes their *status* under the local laws of the States wherein it is an institution. "No person held to service or labor in one State, *under the laws thereof*, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due." Thus, if a slave be taken voluntarily into, or be permitted to go into a free State by his master, he cannot, should he refuse to return to his master's domicil, be claimed and recovered under this provision of the Constitution, (Butler *vs.* Hopper, 1 Wash. C. C. Rep., 499.) The right of transit with slaves is undoubtedly a right which should be secured to the slave owner; yet, unless the right be protected by statute, or held to exist by comity, as in Illinois, it is not admitted in the free States, nor can it be maintained. Is it not idle, therefore, to tell us of the law of comity, or to point to the speculations of foreign jurists centuries gone by, which the current of judicial authority in this country has swept away?

Judge Martin stated the rule as it is defined in the "Conflict of Laws," by Story, in Lunsford *vs.* Coquillon, (7 *Martin's Rep.*, *p.* 205.) The Court in that case said: "The relation of owner and slave is, in the States of this Union, in which it has a legal existence, A CREATURE OF THE MUNICIPAL LAW. Although, perhaps, in none of them a statute introducing it as to the blacks can be produced, it is believed that in all statutes were passed for regulating and dissolving it * * * *. An Indian captive reduced to slavery under the laws of North Carolina, and a colored man under those of Louisiana, would be considered as the property of the captor or purchaser in every State of the Union, *in which the slavery of Indians or negroes is allowed.*"*

Thus slavery is not recognized or tolerated in the States or Territories where it has no recognition, although it be not forbidden by positive law, because to make it legal and insure it protection it requires municipal regulations. Justice PORTER discussed this whole question as to the effect of the personal laws of domicil in a foreign jurisdiction with great learning and ability in the case of Saul *vs.* His Creditors, (17 *Martin's Louisiana Rep.*, 598, 5 *New Series.*) He expressly states that slavery is not governed thereby, and that a slave taken to Massachusetts or England, where slavery is not recognized, could not be so held under their jurisdiction. To the same point are the cases of Harry *et al. vs.* Decker & Hopkins, and The State *vs.* Jones, decided in the Supreme Court of Mississippi, (Walker's Rep., 42, 85.)

The judgment of Lord Stowell in the case of the slave Grace (2 *Haggard*, 105) has been appealed to in support of the contrary doctrine, and it is often said that it over rules the principles enforced in

* Recent attempt has been made to put the responsibility of this doctrine on the counsel, and shift it from the court. The opinion of the court, which *positively* asserts it, sufficiently repels misrepresentation.

Somersetts' case, that slavery is of a nature that *nothing can support it but positive law.* What was that decision? The main point in the case was whether Grace, who was a slave by the laws of Antigua, became free by reason of a temporary residence in England, whence she voluntarily returned to the domicil of her owner. Lord Stowell decided, as has been decided frequently in the courts of this country, that, by her voluntary return to Antigua, the former *status* of Grace as a slave, which could not be recognized in England, immediately attached. He said, however, that slaves coming into England, though runaways, are free there, and could not be sent out of the country against their will. He held further, that during a slave's residence in England "NO DOMINION, AUTHORITY, OR COERCION CAN BE EXERCISED OVER HIM." (2 *Haggard*, 100, 117, 118, 121.) Now, the law of England did not and does not prohibit slavery. It did not authorize or sanction it; that was all. What then became of the "great principle of public law," that the *status* of negroes taken to a country where there is no law on the subject—no prohibition of slavery, remains as it was "impressed upon them by the law of their previous domicil?" There was no law in England prohibiting slavery, and, although the master's title to his slave was good by the law of Antigua, it could not be enforced in England, nor could the slave be taken from the country, and "carried back to the West Indies to be restored to the dominion of his master." Lord Stowell found no such "great principle of public law," by which the servitude of the negro could "depend on the law of the place where he came from," although there was "no conflicting law," or, more properly, no prohibitory law in England. The master's right of property in the slave ceased in England because the local law which gave the right did not accompany him, and there was no remedy there by which his dominion could be exercised.

"Every right," as Mr. Madison observes in the 43d number of the Federalist, "implies a remedy," and the foundation of property in all civilized States is law. Property, in fact, is an institution of law, and that is property which the law of the land recognizes as such. Take away the law which regulates and protects property, and its ownership, its enjoyment, and the right to transfer or dispose of it ceases. (Wynehamer vs. The People, 3 *Kernan, Rep.* 385; Comstock, Justice.) And this is the rule applicable to slave property in the Territories, unless there be some local law for its protection. The slave owner may undoubtedly take his slaves with him into a Territory, not because the Constitution creates any right of property, but because his title is fixed by the law of the particular State whence he goes. That law, however, can have no force within a Territory, nor beyond the limits of the particular State, because, as Mr. Justice Nelson remarks in the "Dred Scott case," "no State or nation can affect or bind property out of its territory," or "enact laws to operate beyond its own dominions." (*See Story's Conflict of Laws*, § 7.) Once in the Territory, slave property is subject to, and must be governed by the law of the owner's new and actual domicil. And, unless those local laws recognize slaves as property, and enforce the master's dominion; unless they extend to him complete protection of ownership,

use, and disposal, and provide remedies against molestation and injury from others, the property is worthless. It is, indeed, this complete dominion of the master enforced by "local regulations" which makes slave property valuable. Whether a Territorial Legislature may refuse to pass such laws or has the power to pass them is not a mooted question, except with the few extremists who contend that it has no power at all to legislate on the subject. It is denied, as Mr. DOUGLAS' reviewer denies, that a Territorial Legislature may exclude slavery from the Territory by positive legislation. That question we shall consider so soon as we dispose of another which has precedence in our arrangement of the discussion.

WILL THE COMMON LAW PROTECT SLAVERY IN THE TERRITORIES?

We have said that slavery does not depend upon and cannot be upheld under the common law. The lawfulness of African slavery in England was made a question in the courts of that country for the first time in 1677, and from that period to the judgment of Lord Mansfield in Somersett's case, in 1772, there were seven decisions. In three of them (Butts *vs.* Penny, Gelly *vs.* Cleve, and Pearne *vs.* Lisle) it it was held that trover would lie for a negro, and in four (Chamberlayne *vs.* Harvey, Smith *vs.* Brown and Cooper, Smith *vs.* Gould, and Shanley *vs.* Harvey) that there could be no property in slaves in England. The case of Chambers *vs.* Warkhouse, in 1693, was trover for "dog-whelps," and incidentally the court said that the action would lie for musk-cats, monkeys, and negroes, "because they are merchandise." The reason of the decision in Butts *vs.* Penny, which was really an action for the value of negroes which the plaintiff possessed, not in England, but in India, and of Gelly *vs.* Cleve, was that "negroes are heathens, and therefore a man may have property in them," but that they were made free by becoming Christians. The first of these cases was decided in 1677, and the second in 1694; and it is probable that the decisions induced the provisions to be found in early Colonial acts, as in the Maryland law of 1715, chap. 45, the Virginia statute of 1682, and the South Carolina act of 1690, that "baptism" or "becoming a Christian" would not manumit a slave.

Somersett's case, the case of the slave Grace, and the cases of Forbes *vs.* Cochrane, (2 *Barn. & Cres.*, 440; 3 *Dow. & Ryl.*,) and Williams *vs.* Brown, (3 *Bosanq. & Pull.*, 69,) all place slavery under the sanction and recognition of positive law only. By positive law statutes alone are not included; but customary law, or law of general usage and tacit acquiescence, which becomes the law of a particular State. Thus the laws of the Colonies by which slavery was regulated and protected, and laws declaring, as in Virginia, in 1727, "that slaves should pass as chattels," and in South Carolina, in 1690, that they should be deemed in the payment of debts "as other goods and chattels," and "accounted as freehold in all other cases," were a recognition by statutory enactments of an institution which for awhile depended only on the law of usage and acquiescence.

The decisions of the courts of this country are accordant with those of England, that slavery was unknown to the common law. We do not care to refer to the decisions of the courts in the Free States,

among the most prominent of which are those of the Commonwealth *vs.* Ave, (18 *Pick.*, 212,) and Kauffman *vs.* Oliver, (10 *Pennsylvania State Rep.* by *Barr*, 517,) to maintain this proposition. We shall take the decisions in the slave States, where the courts have no "prejudices against slavery." The first case to which we refer is Lydia *vs.* Rankins (2 *A. K. Marshall*, 470.) The Supreme Court of Kentucky said, "slavery is sanctioned by the laws of this State, and the right to hold them under our municipal regulations is unquestionable. But we view this as a right *existing by positive law of a municipal character*, WITHOUT FOUNDATION IN THE LAW OF NATURE, OR THE UNWRITTEN OR COMMON LAW." In the Supreme Court of North Carolina, in The State *vs.* Reed, (2 *Hawks*, 457,) Judge Henderson said: "The common law is CUT DOWN, *it is true*, BY STATUTE OR CUSTOM *so as to tolerate slavery*, yielding to the owner the services of the slave, and any right incident thereto as necessary for its full enjoyment." In South Carolina the Supreme Court, Evans, Justice—the same who was recently a Senator of the United States—decided, in 1847, in The State *vs.* Fleming, that *an indictment does not lie at common law for the killing of a slave*, and that it was purely a statutory offence, (2 *Strobhart*, 464.) And in the Supreme Court of Georgia, in the case of Neal *vs.* Farmer, (9 *Geo. Rep.*, 562, 566,) Justice Nesbit said: "The common law recognizes but one species of slavery as having existed in England under its sanction at any time, and *that was villeinage.* * * * The unconditional slavery of the African race, as it exists in Georgia, never did exist in Great Britain. I do not mean, of course, in the British Empire, but in the Island of Great Britain. IT NEVER HAD A STATUS BY THE COMMON LAW."

It may be urged, as it sometimes is, that villeinage was, to all intents and purposes, slavery. It was so undoubtedly to a certain extent, because villeins were transferable, and descendible. But a villein was free to all other men but his lord. He could sue other men in the courts, was a subject of the Crown, might act as executor, and was capable of knighthood. (*Coke*, 126; *Littleton*, 189, 190, 191.) Slavery in the Southern States is a very different institution. The question, however, is not whether villeinage was slavery, but whether the Common Law sanctioned, or can be made to sanction, African slavery. It cannot, unless it be that the courts, both here and in England, have uniformly overshadowed and darkened the law, instead of making it certain and clear to men's comprehension.

There is no decision by any court, that we can find, which puts slavery under the sanction of the common law. The ruling has been universal, that slavery is a local institution, having its tenure in, and depending upon, municipal regulations. The Supreme Court, whose authority is now erroneously relied on to fix slavery in the Territories against the consent of the inhabitants, in Prigg *vs.* The Commonwealth of Pennsylvania, (16 *Peters*, 594,) said: "The state of slavery is deemed to be *a mere municipal regulation* FOUNDED UPON AND LIMITED *to the range of the Territorial laws.*" And further, "It is manifest from this consideration that if *the Constitution had not contained the clause requiring the rendition of fugitives from labor*, every non-slaveholding State in the Union would have been at liberty to have declared

free all runaway slaves coming within its limits, and to have given them entire immunity and protection from their masters."

A distinguished jurist of Virginia, Henry St. George Tucker, who, while he did not regard slavery as an institution worthy of all admiration, stated the law with accuracy and fairness, in his edition of Blackstone undertakes to explain, and does explain, how slavery was established and protected in the Colonies. He says; "Local circumstances gave rise to a *less justifiable departure from the principles of the common law in some of the Colonies in the establishment of slavery*, a measure not to be reconciled either to the principles of the laws of nature, or even to the most arbitrary establishments in the English government at that period; absolute slavery, if it ever had any existence in England, having been abolished long before. These instances" [he had referred to other departures from the common law] "show that the Colonists, in judging of the applicability of the laws of the Mother Country to their own situation and circumstances, did not confine themselves to very narrow limits." (1 Tucker's Blackstone, 388.) Holt and Mansfield, too, though they adjudged that slavery could not be tolerated in England under the common law, held it legal in the Colony of Virginia, for the reason, stated by the former in the case of Smith *vs.* Brown and Cooper, (2 *Salk.*, 666,) that "the laws of England *do not extend to Virginia;*" "being a conquered country, their law is what the King pleases." In other words, if the common law of England, with all its principles favoring freedom, had extended to or been the law of the Colonies, slavery, in the absence of local regulations for its support, must have fallen.

Let us admit, for argument sake, that protection for slave property in the Territories can be found in the principles of the common law. How is the common law to get into the Territories? The people who immigrate cannot take it with them, because in one of the slave States, Louisiana, the civil law prevails, and the common law is of authority nowhere in this country except by legislative adoption. Will the Constitution, with all its capacity for expansion, as now interpreted, carry the common law into the Territories, and give the courts jurisdiction thereunder? The Supreme Court says not. In Wheaton *et al. vs.* Peters *et al.*, (8 *Peters*, 659,) the court said: "There is no principle that pervades the Union and has the authority of law that is not embodied in the Constitution and laws of the Union. *The common law could be made a part of our federal system* ONLY *by legislative enactment.*" Therefore, if the newly invented theory—we do not think it will ever be patented—that the common law will protect slavery in the Territories were true, as certainly it is not, to defeat and deny protection to that property, and thus shut it out, all that will be necessary is, that the Territorial Legislature shall not enact that the common law shall be the rule of action and decision. That would, and in fact does, bring us to a choice between a "federal slave code" and the free action of the Territories on the subject of slavery. Mr. DOUGLAS' reviewer, and those who adopt his theories, may try to sail around in a circle as much as they please. The current of popular opinion will drive them, despite their efforts, to sail away from, or around it, back to this starting point. They will be

forced to come to the principle of "Popular Sovereignty," or mount the platform of Congressional intervention. There is, and can be, practically, no middle passage.

DEPRIVATION AND CONFISCATION OF PROPERTY.

The reviewer of Mr. DOUGLAS' opinions, not content with ascribing to him such as he never uttered and does not hold, seems determined to make up, if it may be, in big words for the scantiness of his materials. He charges him with claiming "for the Territorial governments the right of confiscating private property," a charge as unfounded as it is despicable. And then, as if to frighten men from their propriety, he swells and struts and orates, like a poor actor on the boards, with the fifth amendment to the Constitution in one hand, and *Magna Charta* in the other, brandishing both the while. Seriously, does our pamphleteer expect to delude and lead astray an intelligent public with such arrant imposture? Is he weak enough to think that such devices, however cunningly invented, cannot be readily discerned and as readily exposed? If such be his expectation his condition is pitiable, and he should be straightway "cut for the simples."

What, in reality, is all this talk about "depriving a man of his property," and "confiscating private property;" what does it amount to? The simple question is: Can a Territorial Legislature, like the Legislature of a State, assume jurisdiction over "all rightful subjects of legislation," slavery included? Our pamphleteer denies that it can, and while he admits that a State Legislature may abolish slavery, and the people of a Territory also, in the convention which shall frame their constitution preparatory to their admission as a State, he declares that such an exercise of power by a Territorial Legislature would be an act of "absolute despotism," and the "confiscation of private property." Why not as much so in one case as another? "The right of property is sacred, and the first object of all human government is to secure it," he says; and almost immediately he tells us that "the President, the judges of the Supreme Court, nearly all the Democratic members of Congress, the whole of the party South, and a very large majority North, are penetrated with a conviction that no such power is vested in a Territorial Legislature, and that those *who desire to confiscate private property of any kind must wait until they get a constitutional convention or the machinery of a State government into their hands.*"

We protest against this wholesale libel, embracing the President, the Supreme Court, and the Democratic party, in and out of Congress. None of them subscribe, we are sure, to the monstrous doctrine that any constitutional convention or State Legislature can "confiscate private property," or deprive any one of property "except by due process of law." Constitutions are framed to fix and protect the rights of the people, not to destroy them. And a State Legislature, even if there be no constitutional check upon its powers over property, can take no man's property from him, as the right to be secure in it is defined in *Magna Charta*, in the Federal Constitution, and in the Constitutions of the several States. There is no such thing in the

legislative power under our system of government as omnipotence. The Supreme Court, in Wilkinson *vs.* Leland, (2 *Peters*, 657,) in deciding on a law of Rhode Island, enacted not under a written Constitution, but under the Royal Charter, granted in the 15th year of Charles II, said: "That government can scarcely be deemed to be free *where the rights of property are left solely dependent upon the will of the legislative body* without any restraint. The *fundamental maxims* of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice would be warranted in assuming that the power to violate and disregard them—*a power so repugnant to the common principles of justice and civil liberty*—lurked UNDER ANY GENERAL GRANT *of legislative authority*, or ought to be implied from any general expression of the people. They ought not to be presumed to part with these rights, so vital to their security and well being, WITHOUT VERY STRONG AND DIRECT EXPRESSION OF SUCH AN INTENTION."

The same principle of "limits to the legislative power" was stated in Fletcher *vs.* Peck, (6 *Cranch*, 136;) and Judge Chase, in Calder *vs.* Bull, (3 Dall., 387,) speaking of laws to take away personal liberty or private property, or to take property from one man and give it to another, used this emphatic language: "To maintain that our *federal* or *State Legislatures* possess such powers, even if they had not been expressly restrained, WOULD BE A POLITICAL HERESY ALTOGETHER INADMISSIBLE IN OUR FREE REPUBLICAN GOVERNMENT."

When, therefore, our pamphleteer asserts that the supreme legislative power of a sovereign State alone can deprive a man of his property, if he means thereby one of the States of this Union, which are neither supreme nor sovereign, we tell him that he preaches a doctrine which would not be tolerated anywhere except under a despotism. We say that the States are not supreme, because, as Chief Justice Taney forcibly puts it, in *Prigg vs. The Commonwealth of Pennsylvania*, (16 Peters, 628:) "The Constitution of the United States, and every article and clause in it, is a part of the law of every State in the Union, *and is the paramount law.*" They are not sovereign, because sovereignty implies full, uncontrolled power, and the powers of the States are limited by the Constitution, and every State owes obedience to "the laws of the United States which shall be made in pursuance thereof." The States possess a limited sovereignty, just as the general government does, and are sovereign only within their sphere of action. But, sovereign or not, as it may please you to call them, no State can confiscate the property of its citizens or deprive a man of its use "without due process of law," nor take private property otherwise than for public use, nor then, even, "without just compensation."

The fact is, that our pamphleteer, in his hot zeal to crush Mr. DOUGLAS with the odium of advocating the confiscation of private property, has entirely overlooked or designedly perverted the meaning of the protection in the Federal Constitution, and in the State Constitutions, against a violation of the rights of private property. "Due process of law," and "the law of the land," the words generally employed in State constitutions, without which, no man can be

deprived of his property, are synonymous terms. They mean that no man shall be *deprived* of his property except by lawful trial, and the judgment of his peers. (2 Coke's Inst., 48, 50.) A legislative enactment that professed in itself to punish a person, or to deprive him of his property, or to take the property of A and give it to B, without trial before a judicial tribunal, would be against "the law of the land," or "without due process of law." The law of the land means a general public law acting upon and equally binding upon every member of the community. (Walley's heirs *vs.* Nancy Kennedy, 2 Yerg., 555; Vanzandt *vs.* Waddell, ibid., 260; Jones *vs.* Perry, 10 ibid., 71; 6 Penn'a State Rep., 91.) A law to abolish slavery, the right to enact which our pamphleteer concedes to a constitutional convention of a Territory or a State Legislature, is not against the law of the land, nor a law depriving a man of his property "without due process of law," because it is general in its character and acts upon all alike.

Chief Justice Ruffin, in the Supreme Court of North Carolina, in Hoke *vs.* Henderson, (4 *Devereux*, 17,) discusses this very point, and draws the distinction between a law to deprive one citizen of his slave and a law to free all the slaves in the State. He said: "It has been adjudged that the Legislature cannot seize the land or slave of a citizen and confer them on another. And in the case of *Allen* vs. *Pedan** it was applied in a remarkable manner, and to the extent that the Legislature could not exact that the property in a slave should cease and exist in one person, upon the ground, I presume, that it was not a general provision for the extinction of slavery *but the depriving of a single citizen of his property*, WITHOUT ANY MOTIVE OF PUBLIC UTILITY OR VIEW TO GENERAL EXPEDIENCY."

If a law to abolish slavery be a law to confiscate property, then all the States in which it has been abolished confiscated private property. For, although the emancipation of the slaves was gradual and prospective, masters were deprived of the children born after a certain day, which was as much a deprivation of property as if the laws had acted directly on the parents. The offspring follows the mother, and to confiscate the child would be, if the theory which we oppose were true, as great an outrage as to take away the mother without due process of law. And so, upon the same reasoning, the ordinance of 1787, which by its 6th article inhibited slavery, was a confiscation of private property by Congressional legislation, for there were numbers of slaves at the time in Illinois and Indiana. It is true that the ordinance was the creature of the confederation, and that Congress adopted it in 1789, in fulfilment of "engagements entered into," under the Constitution, with the States that ceded the territory. Still, if to inhibit slavery was to "confiscate the private property" of slave owners at Vincennes, Kaskaskia, Cahokia, &c., in violation of the great principles of *Magna Charta* embodied in article 2, what right had the Congress of the Confederation, or Virginia, or all the States, to participate in the wrong? How, if to exclude slavery from certain limits be to deprive a man of his property without due process of law,

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* This case is reported in vol. 1, North Carolina Law Reporter, p. 638, and the opinion of Judge Cameron, which is very brief, is evidently on the ground stated by Judge Ruffin.

did the slave-holding States of Delaware, Maryland, Virginia, and Mississippi declare that slaves brought within their several jurisdictions for merchandise should be free? By what authority did Congress pass the act of 1850, to suppress the slave-trade within the District of Columbia, by which slaves introduced therein for sale or to be put in depot are manumitted? Again, if to prohibit slavery be an act of confiscation of property in a Territorial Legislature, it is the same as the act of a convention, or of a State Legislature. It cannot be "absolute despotism," it cannot be "confiscating private property" in a Territorial Legislature to exclude or prohibit slavery, "if the people of a new State either in their Constitution, or in an act of their Legislature may make the negroes within it free or hold them in a state of servitude." The doctrine is not only unsound, but in the extreme absurd. To confiscate property, or to deprive a man of his property is an outrage which no State can perpetrate. It is beyond the power alike of conventions and legislatures to violate the fundamental principles upon which all the rights of the people in this country repose.

Not the least singular part of our pamphleteer's remarks on confiscation and deprivation of property, in his application of those terms to the inhibition of slavery, is the blundering lack of harmony in his statements. This proposition, "that the supreme legislative power of a sovereign State can alone deprive a man of property," "is so plain, he alleges, so well established, and so universally acknowledged, that any argument in its favor would be a mere waste of words;" and, at the same time, he affirms that the exercise of this very power is a "*crime which cannot be committed by Congress, or by any State Legislature*, EXCEPT IN FLAT REBELLION TO THE FUNDAMENTAL LAW OF THE LAND." He calls it "legislative robbery" there; and in another place he says truly that "there is no government in the world, however absolute, which would not be disgraced and endangered by wantonly sacrificing private property, even to a small extent." And yet to "deprive a man of his property," for doing which, even to a small extent, would disgrace the most absolute government in the world, he positively assures us may be properly done by a constitutional convention in a Territory, or by a State Legislature! "It is also acknowledged"—we wish to quote again the very words of the "Observations," so that there may be no mistake as to the writer's meaning—"that the people of a new State, either in their Constitution or in an act of their Legislature, *may make the negroes within it free, or hold them in a state of servitude.*" This, too, in the face of the assertion, again and again repeated, that the exercise of such a power by a Territorial Legislature would be "confiscating private property;" would be to "deprive a man of his property," "to take it away" as the thief and the spoiler. The plain English of all this is, that the exclusion or prohibition of slavery is confiscation of property and "legislative robbery" in a Territorial Legislature, but a legitimite right of sovereignty in a new State, which may be exercised in the two modes stated. "Angels and Ministers of Grace defend us!" Is the man stark mad; does he jest; or is intellect so obtuse that he cannot see the bald absurdity of his own statements, nor detect the monstrosity which underlies his doctrines? Be

this as it may, he has sunk beyond rescue into a pit of his own digging, as he rushed blindly forward, crying out "confiscation and deprivation of property," at Mr. Douglas, to the astonishment, not enlightenment, of the public.

Forfeiture is unknown to the federal law, even in cases of treason.—(See act of 1790, chap. 90, sec. 24, 1 *Stat. at Large.*) It was a part of the common law, but has been modified by statute in England in cases of felony and treason. If it exist in any of the States, as it does not, we know, in many of them, as it does not in Connecticut, Illinois, Indiana, Missouri, Ohio, and Tennessee, it is expressly limited to attainder of treason. Confiscation applies to the debts and property of an enemy in time of war; but the right, although it exists in the United States, depends, as the Supreme Court held in Brown *vs.* The United States, (8 Cranch, 110,) upon a special act of Congress. It is a right which the States exercised against those who sided with the Crown during the Revolution. It is a confusion of terms, therefore, to apply forfeiture and confiscation as Mr. DOUGLAS' reviewer applies them. Hence, we think, he seized on startling words either with a purpose to mislead, or he fills a part in "the blind lead the blind."

Inasmuch as a law to exclude, prohibit, or abolish slavery, which acts upon a whole community, and not upon a single individual, or any number of persons less than the State, is, as the judicial decisions of the country have settled, not a law which deprives a man of his property, or takes it for public use, a State Legislature is clearly competent to enact it. The exercise of the power, as well as the mode of exercising it, is a question of discretion and expediency only; and as slavery is an institution in the Southern States, both valuable and indispensable to their prosperity, guarded from abolition also by the Constitution in five of them, it is not likely that it will, nor is it desirable that it should cease. It will, on the contrary, extend and expand wherever climate and production will suit, or the people want it. While this is all so, it is absurd to say that an act of a Territorial Legislature to exclude it, or prohibit, or abolish it, is to deprive a man of his property "without due process of law." Just because it is absurd to say that that which is "confiscation" and "legislative robbery" in a Territorial Legislature, becomes in a Territorial Convention which, with or without an enabling act of Congress, that Territorial Legislature calls, or in a State Legislature which the Constitutional Convention clothes with all its functions, fair, right, and just. It is such an absurdity, so patent, so glaring, so tangible, that schoolboys at their play may expose it.

TERRITORIAL LEGISLATION.

The gist of the "Observations" which we are considering is, that a Territorial Legislature cannot pass an act to exclude slavery, or to prohibit its introduction, because it is not sovereign, and Judge DOUGLAS is charged with the heresy of asserting that the "Territorial Governments are sovereign." They are not sovereign our author contends, because they are temporary and provisional, the creatures of Congress, and because Congress cannot vest them with sovereignty. He says that "The truth is that they *have no attribute of sovereignty*

about them." The truth *is* exactly the contrary. The legislative power of all the Territories, by their Organic Acts, extends to "all rightful subjects of legislation consistent with the Constitution of the United States." That of the States extends no further. Now, in our simple ignorance we have always understood that legislation—the power to regulate, control, and protect property, the power to tax, to fix domestic relations, to confer jurisdiction on courts and magistrates, to provide for laying out roads and highways, to establish schools, to define crimes and punishments, to set up corporations, public and private, and the power to do numerous other similar things—*is* "an attribute of sovereignty," and its highest attribute. And yet our learned commentator on law, and truth, and history, pointedly declares that legislation which, within the Constitution, determines everything in a Territory, and in a State also, is *not* an attribute of sovereignty. Most wise commentator what plunge of folly will you take next!

It is the confusion raised by the constant employment and abuse of the words "sovereign" and "sovereignty," in speaking of a Territorial Government, that leads men's minds to the conviction that a Territorial Legislature may not enact laws to exclude slavery from, or to prohibit it in the Territory. Legislation is an act of sovereignty, and unless the Organic Act of the Territory specially except slavery from the legislative power, it is useless to argue that the Legislature may not, and must not, deal with it as with other subjects of legislation. It must of necessity—unless we return to the policy which was abandoned in 1850, and the abandonment confirmed in 1854—be within the rightful subjects of legislation committed to the Territorial Governments. For, otherwise, there can be no legislation for the protection of slavery; and without laws to protect it, such as exist in the slave States, it will neither go into a Territory nor can it live therein as an institution. Unless, indeed, our author, unable to find protection for it in the Territories, either in the law of nations, the civil law, the common law, or the Constitution, except where a slave escapes from the owner, should first locate the law for the protection of slave property in the air above, and then cause it to drop "from the clouds." Let him try his hand at it; his success may not accord with his ambition, but it will be equal to his powers, and even that, in view of his short comings so far, may be consoling.

Blackstone says that "sovereignty and legislature are, indeed, convertible terms; one cannot subsist without the other." Sovereignty in England, however, where Parliament is omnipotent, is a different thing from the limited sovereignty which resides in Congress and our State Legislatures, acting under written Constitutions which confer limited powers. But as Blackstone says: "by the sovereign power is meant the *making of laws;* for, wherever that power resides, all others must conform to and be directed by it, whatever appearance the outward form and administration of the Government may put on."—(Book 1, 46, 49.) And the Supreme Court, by Chief Justice Marshall, in McCulloch *vs.* The State of Maryland, (4 Wheaton, 316,) said that all legislation is an exercise of sovereignty, and that wherever the Legislature acts at all it acts by virtue of its power to make laws.

The sovereign power, as to which there is "so much noise and confusion," is simply the law-making power. It is not denied that Congress may establish Territorial Governments, and provide them with a local Legislature with full or limited powers of legislation. How far the power to legislate extends is the point of dispute.

If there be anything in the opinion of the Court in the "Dred Scott case," or in the separate opinions of the judges which conflicts with the right of the people in the Territories to decide the question of slavery, as they decide all other questions for themselves, we have been unable to find it. Speaking of the forms of government which Congress has established for the Territories, Chief Justice Taney says: "In other instances it would be more advisable to commit *the powers of self-government* to the people who had settled in the Territory, as BEING MOST COMPETENT *to determine what was best for their* interests." (19 *Howard*, *p.* 449.) And Mr. Justice Campbell says:

"I admit that to mark the bounds for the jurisdiction of the government within the Territory, and of its power with respect to persons and things within the municipal divisions it has created, is a work of delicacy and difficulty, and, in a great measure, is beyond the cognizance of the judicial department of that government. *How much municipal power may be exercised by the people of a Territory, before their admission into the Union, the courts of justice cannot decide. This must depend for the most part on political considerations*, which cannot enter a determination of a case of law or equity."—(*p.* 514, 515.)

Thus, we are authorized to say, that the right of the people in the existing Territories to legislate on the subject of slavery, and admit or exclude it, has not been judicially determined. It remains to see whether Congress fixed any other limitation on Territorial legislation than the Constitution.

There was an attempt made in 1850 to shape the measures of adjustment so as to inhibit the Territories from legislating "in respect to African slavery." How signally it failed is a part of the legislative history of the country. And in 1854 the Kansas-Nebraska bill, which also extended the legislative power of the Territories to "all rightful subjects of legislation, not inconsistent with the Constitution," was, to make it plainer, finally amended so as to "leave the people thereof perfectly free to form and regulate their domestic institutions in their own way." Mr. Chase, of Ohio, made an unsuccessful effort in the Senate to amend the bill by a provision declaratory of the right of the people of Nebraska, through their appropriate representatives, "to prohibit the existence of slavery therein." Mr. Shields and Mr. Pratt, both appealed to him to insert the words also, "or to allow slavery," thus presenting the alternative proposition. He declined; and for that reason, and the additional reason that the bill as it stood included all Mr. Chase proposed, his amendment was rejected. Mr. Badger, speaking against the amendment, said:

"*The clause as it stands is ample. It submits the whole authority to the Territory to determine for itself. That, in my judgment, is the place where it ought to be put.* IF THE PEOPLE OF THE TERRITORIES CHOOSE TO EXCLUDE SLAVERY, SO FAR FROM CONSIDERING IT AS A WRONG DONE TO ME

OR TO MY CONSTITUENTS, I SHALL NOT COMPLAIN OF IT. IT IS THEIR BUSINESS." (*Cong. Globe*, 1*st Sess.*, 33*d Cong.*, *vol.* 28, *Part* 1, *page* 422.)

And Mr. DOUGLAS, in reply to Mr. Stuart, of Michigan, who supported the Chase amendment until Mr. Badger indicated his purpose to present his celebrated "Proviso," which was subsequently adopted, said: "IT [the bill] DOES NOT EXCEPT SLAVERY; *it excepts no question pertaining to it*, but applies to all rightful subjects of legislation consistent with the Constitution of the United States. * * * The Senator from Michigan thinks that we ought to say in so many words, that they have the right to legislate upon the subject of slavery, EITHER TO INTRODUCE OR EXCLUDE. Why, sir, *there is no doubt* but that THAT IS SAID IN THE BILL NOW, *in as clear language as any man can use*, except that the power is to be subject to the limitations of the Constitution of the United States. [To which it would be subject without any such limitation.] *Can you make it clearer?*"—(*Append. Cong. Globe*, 1*st sess*, 33*d Cong.* 287.) Again; on the 2d of July, 1856, when his colleague, Mr. TRUMBULL, moved to amend the "Toomb's Bill" for the admission of Kansas, by a clause declaring it to be the true intent and meaning of the Kansas-Nebraska Act "to confer on the Territory of Kansas *full power at any time, through its Territorial Legislature*, TO EXCLUDE SLAVERY FROM SAID TERRITORY, *or to recognize or regulate it therein*," Mr. DOUGLAS spoke to the same effect. He said: "They [the Republicans] know that we vote against putting it in this bill, because it is improper to put it here, *although* IT IS JUST WHAT THE ACT DECLARES."—(*Append. Cong. Globe*, 1*st sess.* 34*th Cong.*, *p.* 797.) Here, and in his speech of March 3, 1854, in defence of the principle of non-intervention by Congress, and self-government for the Territories, our pamphleteer will find an answer to his question, "What did Mr. DOUGLAS mean when he proposed and voted for the Kansas-Nebraska Bill repealing the Missouri restriction?"* He meant to declare, as Mr. Buchanan aptly said in his Letter of Acceptance in 1856, "that the people of a Territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits." And this, for the unanswerable reason which Mr. Buchanan also employed, that all agree that they will have the power so to decide when they frame a Constitution. Should his Reviewer still be in any doubt as to Mr. DOUGLAS' meaning in the Kansas-Nebraska Act, we refer him to an editorial in the *Washington Union* of October 5, 1858, wherein the "Official Organ" devotes three columns and more, with extracts of his speeches and references to his votes in 1850, and 1854, to prove that, from the beginning, his studied purpose was *to commit the whole subject of slavery to the Territorial Governments, to be solved and settled when and how they please.*

There being no restriction upon the legislative power of the Territories as to that subject, they may either admit or exclude slavery. We can see no other alternative, nor yet any valid objection. If they may admit, and regulate and protect—a power which none but the Republicans deny—the Territorial Legislatures are just as competent to exclude or prohibit slavery. These are correlative powers, and if

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* With his usual accuracy, the Reviewer confounds the Missouri Restriction with the Missouri Compromise. They were very different measures.

a Territorial Government be "sovereign" for one purpose, it is for the other. The only question which can be started is, would a law of a Territorial Legislature to exclude slavery from the Territory be repugnant to the Constitution? If so, it is null and void, and the courts will so decide; but it is a question of individual right only. It is a question with which the States, as Thomas H. Bayly, of Virginia, a very thorough States Rights man, said in the House of Representatives, in August 1848, have nothing to do; it is a "question of property, a question of *meum* and *tuum*."

"We believe that the people of the Territories," as Gen. Houston expressed it in a resolution which he offered in the Senate, February 8, 1850, "have the same inherent right of self-government as the people of the States." We believe as Mr. Robert M. McLane, of Maryland, (now Minister near the Government of Mexico,) stated the principle in Territorial Legislation in the House of Representatives, June 1, 1848. "Mr. McLane [says the record] interposed and said, that no one contended that the Territories possessed entire or absolute sovereignty; *they have a limited or qualified sovereignty* by which they may legislate on this subject of slavery, if they see fit."—(*Append. Cong. Globe, vol.* 19, *p.*—.) That was said by a Southern man, and properly said, too, before the Territorial Laws were freed from Congressional control or supervision, as they were by the legislation of 1854. Believing with him, we find no difficulty in accepting Mr. DOUGLAS' dogma, which harmonizes fully with the apt exposition of Mr McLane.

But, says the Reviewer, "Congress has no power, authority, or jurisdiction over the subject," and cannot confer it upon the people of a Territory; and as the Territorial Government takes all its power from Congress under the Organic Act, it cannot do that which is prohibited to Congress.

Territorial Governments, we reply, as the Supreme Court has more than once decided, are authorized by the Constitution, and clothed by Congress with powers to legislate. The people who live under them, and are governed by their laws are a part of that same people who ordained and established the Constitution, and reserved to themselves all the power not delegated to the United States nor prohibited to the States. As citizens of the several States, before migrating to the Territories, they were exempt from Congressional legislation in their internal affairs, and governed by laws of their own making. They lose no right by removing into a Territory. The same fundamental principle follows them there, and they have the same right in a Territory as they had in a State to be governed, as to all their domestic affairs, by laws of their own free choice. Slavery is a domestic affair, a local institution, and, inasmuch as the Territories may legislate on "all rightful subjects," slavery can form no exception to the general rule. Legislation is sovereignty, limited or qualified, just as the power to legislate is conferred or possessed. And if a Territorial Legislature be restrained from legislating on slavery as it may judge fit, because that is an exercise of sovereignty, it will be impossible to show how it may legislate on other subjects or pass other laws. "For legislature," as Blackstone observes, "is the greatest act of superiority which can be exercised by one being over another." Hence, if

legislation in a Territory be not circumscribed or hedged in by the Organic Act, there is no limit to its exercise within the Constitution of the United States—wherein arises a question which is purely judicial.

"The essence of sovereignty consists in having no superior. But a Territorial Government has a superior in the United States Government, upon whose pleasure it is dependent for its very existence—by whom it lives and moves, and has its being—who has made and can unmake it." Each State, we reply, has a superior, also, in the Government of the United States, which was established by the people and not by the States. Each and every State owes obedience to the laws of the United States, and that obedience may be coerced by the strong arm of Federal Power. Yet, the States are sovereign so far as laws regulating their internal polity are concerned. It is true that a Territorial Government owes its establishment to Federal Legislation, and that its Organic Act may be repealed. But so long as the people of a Territory are loyal to the Constitution, so long as they are obedient to law and free from anarchy and revolution, to deprive them of a Government would be an act of unmitigated injustice, and a breach of public duty and public faith. Again, while the Organic Act remains intact, under which they are left "perfectly free to form and regulate their domestic institutions in their own way," the people of a Territory may legislate without interference or intervention by Congress or the States on "all rightful subjects," and to that extent, in framing laws for their own government, they possess a qualified or limited sovereignty. The States possess no more. But suppose the Organic Act be repealed, and there should be set up, as there was in Oregon, a "Provisional Government of the People," could not such a Government legislate independently—unless there be armed intervention and military coercion—and inhibit slavery as the "Provisional Government" in Oregon inhibited it? What, then, is all this fustian worth? To what practical end does all this outcry about "sovereignty" and "sovereign power," as those terms are daily employed, direct? It is mere bandying of catchwords, mere perversion of terms proving nothing, and solving nothing.

THE DIFFERENCE BETWEEN HIS REVIEWER AND MR. DOUGLAS.

Commenting upon the proposition of Mr. Douglas that "the Constitution neither establishes nor prohibits slavery in the States or Territories," his Reviewer observes: "If it be meant by this that the Constitution does not, *proprio vigore*, either emancipate any man's slave or create the condition of slavery and impose it on free negroes, but leaves the question of every black man's *status*, in the Territories as well as in the States, TO BE DETERMINED BY THE LOCAL LAW, *then we admit it, for it is the very same proposition which we have been trying to prove.*"

That is precisely what it does mean; no more, no less. You admit the correctness of the proposition, and yet, with bungling, inaccurate statements of law, history, and fact, combat that which you admit to be right through six columns of a newspaper. And your sole point of difference with Mr. Douglas is that he says precisely what he has

asserted in the Senate, with remarkable consistency, for nearly ten years past. That the people of a Territory have the right of self-government, and, *like those of a State, shall "decide for themselves whether slavery shall or shall not exist within their limits."* Mr. DOUGLAS believes that the "local law," by which the *status* of a slave taken from Virginia or Kentucky, Maryland or Georgia, into a Territory, is the local law of the master's new domicil, not that of the domicil which he quitted. The Reviewer denies this, and though he does not say so in so many words, puts himself on the proposition that the local law of the master's old domicil accompanies him to his new, by virtue of some hidden power in the Constitution of the United States, and there maintains his dominion and authority. Let us look into this a little.

It is scarcely necessary to remark that the Constitution is neither self-acting nor self-executing, and that it can give no effect to State laws, nor extend their jurisdiction beyond the limits of a State. The slave owner may take his slave with him into a Territory, but we do not perceive how he can take the local law of the particular State whereby he was entitled to his services. Such a right would involve incongruity and confusion in the local regulations in a Territory almost inexplicable, and therein is the absurdity of the claim. For example, in most of the States slaves are chattels, while in Louisiana they are real estate, and in Kentucky, for most purposes, chattels, but descend under wills *sub modo* as real estate to the heir. In South Carolina they are, we think, still considered real estate, except as to payment of debts, and as such descendible; while in Maryland the slaves of the wife are her's in full property, and not subject to the debts of the husband. Now, is it susceptible of serious thought that the slave owner from each one of these States who may go into a Territory, will take with him the particular law of his State for the regulation and government of his rights of property in his newly-acquired domicil? The right of property in slaves is guarded against emancipation in Tennessee, Georgia, Maryland, Florida, and Arkansas, by constitutional provision. Would citizens of those States take along, also, each the Constitution of his State to guard and protect this property from that "confiscation" which our pamphleteer deems it the right of a convention in framing a constitution, or a State legislature lawfully to exercise? It is useless to push the absurdity further.

The Reviewer acknowledges that slave property is entitled to protection in the Territories, but he fails to give it any, or point out how it may be done. He says justly that: "The right of property is sacred, and the first object of all human government is to make it secure. *Life is always unsafe where property is not* FULLY *protected.*" He says further, that slaves, as property, are "guaranteed to the owner as much as any other property is guaranteed by the Constitution," and still he refuses to the slave owner any laws of protection, and leaves him in a Territory to make his way as best he can with his slaves, without any security whatever for the property. He talks about law, it is true, but his law, in the absence of a Territorial enactment, is a law of imagination—a figment and a fiction. Thus, without intending it, our pamphleteer gets snugly down to the principle of "non-action,"

by which slavery will be, and can be, excluded from a Territory, just as certainly as by "unfriendly legislation" or by positive prohibition.

Mr. DOUGLAS says, as he said in 1850 and 1854, "good or bad," "for slavery or against it," the Territorial laws must stand; while his reviewer insists that the power "to repeal them" is in Congress, without any reservation, thereby shaping his way to the Republican platform. He stands condemned as a heretic by the Democracy in and out of Congress. The Committee on Territories in the Senate made a report by Mr. DOUGLAS, the chairman, July 12, 1856, which was received and acted upon by the Democratic party, North and South, as the true doctrine. On page 13 of that report the power to intervene in the legislation of Kansas, and set aside the acts of the Legislature is denied, "for the reason that they are local laws, confined in their operation to the internal concerns of the Territory, *the control and management of which*, BY THE PRINCIPLES OF THE Federal Constitution, *as well as by the very terms of the Kansas-Nebraska Act*, are confided to the people of the Territory, *to be determined by themselves* THROUGH THEIR REPRESENTATIVES IN THEIR LOCAL LEGISLATURE," and not by the Congress.

There is the "true Democratic doctrine." By that doctrine the Democracy of the Senate stood when they voted against the amendment moved by Mr. Foster, of Connecticut, to the bill for the admission of Kansas in 1856, to repeal certain sections of the Territorial act, "to punish offences against slave property"—a doctrice nowise impugned or departed from by the Geyer amendment to the 18th section. By that doctrine the Democracy of the House of Representatives stood, and the Democracy of the Union incorporated it into their Platform. Mr. DOUGLAS' reviewer over-rides this doctrine of "Non-intervention," strikes down the Democratic Platform, and inculcates the "repeal" of the laws of a Territory wherever they do not suit Congress. All hail, interventionists! get ready for action. And you, Republicans, demand the repeal of the law of New Mexico, by which slavery has been introduced into that Territory. Interventionists of every shade, you have in Mr. DOUGLAS' reviewer a new recruit worthy at least of a captaincy. Show that Parties, like Republics, are not ungrateful.

When Mr. DOUGLAS' reviewer shall commence the work of repealing and annulling the Territorial laws by acts of Congress, we trust that he will not overlook chap. cxv, of the Kansas Laws of 1855, "*An act to prevent non-residents from grazing stock in Kansas Territory.*" We are aware that there is a Federal Statute under which trespassers may be removed from the public lands; but consider it very extraordinary that a Territorial Legislature should assume to make "rules and regulations" concerning them. This act makes a discrimination against the property of non-residents just as odious and less defensible than the act of the Territory of Florida, of June 30, 1834, whereby the slaves of non-residents were taxed higher than those of residents. Congress, inasmuch as the laws of the Territory were subject by the Organic Act to intervention, annulled the law of Florida.—(*U. S. Stat at Large, vol.* 4, *p.* 740.) We have not heard any one suggest, however, the repeal by Congress of the Kansas Statute, by which a

discrimination is made against property, and which, in violation of the spirit and intent, if not the letter of the Organic Act, taxes the property of non-residents higher than the property of residents. Perhaps some of our interventionists will come to the relief of the cattle breeders of Missouri and Iowa next Congress. We shall see.

THE SUPREME COURT'S DECISION.

"The Supreme Court has decided the question. After solemn and careful consideration, that august tribunal has announced its opinion to be that *a slaveholder, by going into a Federal Territory, does not lose the title he had to his negro in the State from which he came.*" None but the Republicans, that we know, will dispute or ever did dispute that proposition. What is said on this point is, that the title to the slave, under the law of the State from which the master removes to a Territory, is barren and valueless, unless it have the recognition and protection of the local law. Without this protection of law, which the local Legislature, as we have had occasion several times to repeat, alone can give, "no dominion, authority, or coercion can be exercised over the slave" except brute force. Hence, the right to take slaves into a Territory as a naked, unprotected, defenceless right, is a right no slaveholder values, and none needs to covet.

Further on, it is said that "the Supreme Court has decided that a Territorial Legislature has not the power which he [Mr. DOUGLAS] claims for it" of determining the slavery question. We have examined the Opinion of the Court in the "Dred Scott Case" with critical care, and assert, as an undeniable fact, that there is not a line nor a sentence in it which, with a fair construction, will warrant this statement. And, although we have read similar statements a hundred times or more, never have we seen any extract or analysis of the opinion which came within a bow-shot of sustaining it. The head notes of the case affixed by the reporter, which are in conflict with the Opinion of the Court, are the only authority upon which this political interpretation of it rests. By dint of repetition and clamor it has received currency, and not otherwise.

Five of the judges who sat in the case of *Prigg* vs. *The Commonwealth of Pennsylvania*, wherein it was held that slavery is a municipal regulation "founded upon and limited to the range of the Territorial laws," sat also in the case of Dred Scott,"—Taney, Wayne, Daniel, Catron, and McLean. There was no difference of opinion among the judges, as the separate opinions which were delivered will show, as to that principle. There was dissent to the opinion of the Court delivered by Justice Story, on other points, but none questioned that slavery is the creature of local law alone, and that by the general law of nations, no nation is bound to recognize it. That decision was neither reviewed, nor overruled in the "Dred Scott case," and was generally accepted as sound law, we think, until Mr. Calhoun and Mr. Butler impugned it in the Senate during the debate on the Oregon bill in 1848. We never heard that it was objectionable before except to the crazy zealots who glory in enticing slaves from their masters, or encourage others in that mode of enlarging the area of freedom. We believe that it stands to-day unimpeached in reason and authority,

and until it is distinctly overruled, we shall pin our faith to it confidently.

With an audacity and meanness only equalled by the silly cry of "deprivation and confiscation of property," Mr. DOUGLAS is next assailed for making a contest at once unnecessary and hopeless with the judicial authority of the Nation. Well did the writer know when he penned the charge, that it was in upholding that same judicial authority that STEPHEN A. DOUGLAS faced, and by the power of intellect and will, put down a mob at Chicago in 1850. Well did he know that he was burned in effigy, hooted at, and outlawed by fanatics and incendiaries in the North, for steadfastly standing by the judicial decisions of the Supreme Court. Well did he know that Mr. DOUGLAS has defended the Court in and out of the Senate, and that the very air of Illinois is vocal almost with his manly vindications of its integrity, purity, and fidelity to its great trust under the Constitution. Well did he know that he could not find a scrap nor a sentence, nor a word anywhere, or at any time uttered by Mr. DOUGLAS, which could give color to, much less support this wretched, limping, ricketty malevolence. It is without any foundation whatever, and is in all its parts a loose, disjointed invention, which all fair men will despise.

"In former times," says our author, "a question of constitutional law once decided by the Supreme Court was regarded as settled by all, except that little band of ribald infidels, who meet periodically at Boston to blaspheme the religion and plot rebellion against the laws of the country." We are for upholding judicial authority everywhere, and have no sympathy with any one who contemns or resists it. We rejoice, too, that the judiciary, which is the great conservative power in the State is so generally respected in our land, and that the Supreme Court, strong in integrity and public confidence, has withstood all assaults. We have a somewhat notable instance in our mind, however, of one high in authority, who did not consider himself bound by its decisions. We shall recur to it for the benefit of Mr. DOUGLAS' assailant, and commend him to turn his now misdirected wrath in another quarter, wherein, if language mean anything, there was not that "decent respect" for the Supreme Court "which none but ultra Republicans yet withhold."

The country is familiar with the case of *McCulloch vs. The State of Maryland*, (4 Wheat,) in which the luminous mind of Chief Justice Marshall made clear, in the opinion of the Court, the power of Congress to charter a national bank. When the same subject was before Congress, at the extra session in June, 1841, a senator from Pennsylvania gave forcible expression to his respect for judicial authority in commenting upon that decision. He said:

"IF ALL THE JUDGES AND ALL THE LAWYERS IN CHRISTENDOM HAD DECIDED IN THE AFFIRMATIVE, *when the question is thus brought home to me* as a legislator, bound to vote for or against a new charter, *upon my oath to support the Constitution*, I MUST EXERCISE MY OWN JUDGMENT. I would treat with profound respect the arguments and opinions of judges and constitutional lawyers; but *if, after all, they failed to convince me that the law was constitutional*, I SHOULD BE GUILTY OF PERJURY BEFORE HIGH HEAVEN *if I voted in its favor.* * * * *But even if the judiciary had settled the question*, I SHOULD NEVER HOLD MYSELF BOUND *by their decision whilst acting in a legislative character.*"—[*Append. Cong. Globe*, 1*st sess.* 27*th Cong.*, *pp.* 162, 163.]

The senator who thus spoke was James Buchanan, the same who is

now President of the United States. Far be it from us to impugn his character or indulge the unjust suspicion that such declarations as these have encouraged the "ribald infidels" who meet annually at Boston "to plot rebellion against the laws of the country." Far be it from us to draw any moral disparaging to the President. Yet we cannot help thinking that he has abundant cause, inasmuch as you have provoked this reference to "former times," to turn to you, Mr. Reviewer, and, in the text of Scripture, sorrowfully exclaim: "*a man's enemies are those of his household.*"

We have only to add, on this branch of our subject, that the article in "Harper's Magazine," to which so much exception is taken, itself shows that Mr. DOUGLAS claims no power for a Territorial Legislature except in subordination to the Constitution as it may be judicially interpreted. The extract from his report of January 4, 1854, accompanying the Nebraska bill, and in explanation of its principles, which appears on page 536 of the Magazine, sufficiently sustains this point. We shall therefore leave it.

A BUDGET OF MISREPRESENTATIONS.

"Again: He says that the States gave to the federal government the same powers which as colonies they had been willing to concede to the British government, and kept those which as colonies they had claimed for themselves. If he will read a common school history of the revolution, and then look at Art. 1, sec. 8, of the Constitution, he will find the two following facts fully established: 1. That the federal government has 'power to lay and collect taxes, duties, imposts, and excises;' and, 2. That the colonies, before the revolution, utterly refused to be taxed by Great Britain; and, so far from conceding the power, fought against it for seven long years."

This is very flippant, and equally weak. It pointedly exhibits the writer's ignorance of our colonial history, and of the relation also which the State governments hold to the general government. If *he* were read in "common school history," he would know that the first Congress, in October, 1774, in answer to the claim of the British Parliament to make laws for the government of the colonies "*in all cases whatever*," adopted a preamble and ten resolutions, embodying their claim of rights. The fourth resolution was: "That the foundation of English liberty, and of all government, is *the right of the people to participate in their legislative council*, and as the English colonies in America could *not "be represented" in Parliament*, that they were entitled to the exclusive right, subject only to the negative of their sovereign, of legislating in all "cases of taxation and *internal polity*." The gist of the resolution was, that as the colonies were not represented in Parliament they should not be taxed, as it declared also, "*against their consent.*" Now, the federal government does not use the "power to lay and collect taxes, duties, imposts, and excises, against their consent," and the States not only "participate in their legislative council"—Congress—but have the exclusive right of legislation in all that concerns *their* "internal polity." Who is correct, Mr. DOUGLAS or his reviewer? The statement shows.

"For instance, he shows that Jefferson once introduced into the old Congress of the Confederation a *plan* for the government of the Territories, calling them by the name of 'new States,' but not making them anything like sovereign or independent States; and though this was a mere experimental *projét, which was rejected by Congress, and never afterwards referred to by Jefferson himself*, yet Mr. Douglas argues upon it as if it had somehow become a part of our fundamental law."

The fact is, that Mr. Jefferson's Plan, which Mr. DOUGLAS' reviewer states was "rejected by Congress," was adopted by Congress on the 23d of April, 1784, and remained in full force until it was repealed by the ordinance of 1787. (IV, Jour. old Cong , 379–'80.)

How does the writer know that Mr. Jefferson "*never afterwards referred to*" the plan? Is he a living witness of that fact? Is he so familiar with all Mr. Jefferson's conversations as to be able to say that he never referred to the *projet?* A positive witness truly. Whether he ever referred to it or not, Mr. Jefferson certainly adhered to the principles of his plan of Government for the Territories, as his works show. He was for keeping the National Government strictly within its constitutional powers; for leaving to the States all the laws and regulations affecting their general interests, and to each community, district, county, and ward the direction of its "local concerns." His leading idea, indeed, as to government was to make it local, so far as it could be consistently done.

"When he took a tour to the South, at the beginning of last winter, he made a speech at New Orleans, in which he announced to the people there that he and his friends in Illinois *accepted the Dred Scott decision*, regarded *slaves* as *property*, and fully admitted the right of a Southern man to go into any *federal Territory* with his slave, and to hold him there *as other property is held.*"

Why not tell the whole truth? The mortification of an exposure might thereby have been saved you. Mr. DOUGLAS said in his speech in New Orleans precisely that which he has always said—that slaves could only be held in a Territory "*subject to the local laws.*" He accepted the "Dred Scott Decision," of course, but not with your false construction. Whatever the decision of the Supreme Court is or may be, as he said in the Senate in February last, and at Columbus and Cincinnati, Ohio, a few weeks ago, on any question, "*is an end of the controversy.*" Here is what he said at New Orleans, in Odd Fellows' Hall, on the evening of December 6, 1858, and he stands by every word of it to-day, and will maintain it ever after:

"The Democracy of Illinois, in the first place, accepts the decision of the Supreme Court of the United States in the case of Dred Scott, as an authoritative interpretation of the Constitution. In accordance with that decision, we hold that slaves are property, and hence on an equality with all other kinds of property, and that the owner of a slave has the same right to move into a Territory and carry his slave property with him, as the owner of any other property has to go there and carry his property. All citizens of the United States, no matter whether they come from the North or the South, from a free State or a slave State, can enter a Territory with their property on an equal footing. And, I apprehend, when you arrive there with your property, of whatever description, *it is subject to the local laws of the Territory. How can your slave property be protected without local law, any more than any other kind of property?* The Constitution gives you the right to go into a Territory and carry your slaves with you, the same as any other species of property; but it does not punish any man for stealing your slaves any more than stealing any other kind of property. Congress has never yet passed a law providing a criminal code or furnishing protection to any kind of property. It has simply organized the Territory and established a Legislature, that Legislature being vested with legislative power over all rightful subjects of legislation, subject only to the Constitution of the United States. Hence, whatever jurisdiction the Legislature possesses over other property, it has over slave property, no more no less. Let me ask you, as southern men, whether you can hold slaves anywhere unless protected by the local law? Would not the inaction of the local Legislature, its refusal to provide a slave code, or to punish offences against that species of property, exclude slavery just as effectually as a Constitutional prohibition? Would it not have that effect in Louisiana and in every other State? No one will deny it. Then, let me ask you, *if the people of a Territory refuse to pass a slave code, how are you*

going to make them do it? When you give them power to legislate on all rightful subjects of legislation, it becomes a question for them to decide, and not for you.

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"You now have my views on the subject of slavery in the Territories. Practically, they amount simply to this: *If the people want slavery they will have it; if they do not want it they will not have it, and you cannot force it upon them.* If these principles be recognized and adhered to, we can live in peace and harmony together; but just as surely as you attempt to force the people to have slavery, against their will, in regions to which it is not adapted, fanaticism will take control of the Federal Government."

The next count in the bill of indictment against Mr. DOUGLAS for inconsistency, is this:

"In 1849 he voted in the Senate for what was called Walker's amendment, by which it was proposed to put all the internal affairs of California and New Mexico under the domination of the *President*, giving him almost unlimited power, *legislative, judicial, and executive*, over the *internal affairs* of those Territories —(See 30th Cong, p. —.) Undoubtedly this was a strange way of treating sovereignties. If Mr. Douglas is right now, he was guilty then of most atrocious usurpation."

Why did you not give the reasons for that vote? It would have exposed your unfairness; that is all. Mr. Walker's amendment was a rescript almost of the act of 1803, for the government of the Territory within the "Louisiana Purchase," and was designed, all other legislation at that session being impraticable, to provide the same protection of law for the new Territories, until a suitable government could be established. Mr. DOUGLAS voted for it for the reason which he gave at the time, because the people were entitled to the protection of law, which it was otherwise impossible to give, all efforts to act on the subject having failed. He said also:

"I believe that the effect of extending the Constitution over it will be to make California a State of this Union, giving them two Senators and a Representative in the Congress of the United States, and authorizing them to form a Constitution and State Government as they please. And believing that, I am in favor of the amendment of the Senator from Wisconsin. It extends the judiciary, the land laws, the Indian laws, and other general laws of Congress over it. And by extending the Constitution of the United States over it, as a Constitution, in so many it erects it into a State with the rights of representation in the Union. * * * * It is true that the State would be in a *quasi* condition, inchoate until it organized a State Government, until it elected its Legislature, and that Legislature elected its Senators; but the moment that be done it will be a State of the Union, with the right of representation. And it would be a State with all its laws complete. *That would be the most summary mode by which this question could be disposed of. I do not think it the best mode.*"—(*Appendix Cong. Globe, 2d Sess. 30th Cong.*, 275.)

Next we have it that Mr. DOUGLAS, in a speech at Springfield, Illinois, on the 12th of June, 1857, expressed himself strongly in favor of repealing the Organic Act of Utah. Why? Because it was understood that Utah was in rebellion against the United States, and that the Federal officials were without authority and in danger of life. The Organic Act was used as a means of disloyalty, and the people, who were as alien enemies to the United States, vindicated their treasonable acts by the government which had been established among them. Mr. DOUGLAS considered that the repeal of the Organic Act would be, under such circumstances, the easiest solution of a troublesome question, which our army in Utah, at an expense of millions, probably, has not been able to settle.

But Mr. DOUGLAS contends that the Territories are "sovereign," and, therefore, in all the cases enumerated he was guilty of "most atrocious usurpation" in assailing and overriding sovereignties. When did Mr. DOUGLAS ever say any such thing? We defy you and

all comers to produce any vote, sentiment, opinion, or speech which can be tortured into such an admission or declaration. Mr. DOUGLAS says only what the Supreme Court says—that Congress may establish Territorial Governments with "powers of self-government" "as being most competent to determine what is best for their own interests." If you do not wish Territorial Governments to legislate without limitation in their own domestic affairs, either take your stand against them, or for a return to the old, abandoned system of Missouri Compromises, Wilmot provisos, and Congressional inhibitions generally.

"But we here come to the point at which opinions diverge. Some insist that no citizens can be deprived of his property in slaves, or in anything else, *except* by the provisions of a State Constitution or by the act of a State Legislature, while others contend that *an unlimited control over private rights may be exercised by a Territorial Legislature as soon as the earliest settlements are made*.

"So strong are the sentiments of Mr. Douglas in favor of the latter doctrine, that if it be not established he threatens us with Mr. Seward's 'irrepressible conflict,' which shall end only with the universal abolition or the universal dominion of slavery."

So strong, it is charged, are the sentiments of Mr. Douglas in favor of the doctrine, "that an unlimited control over private rights may be exercised by a Territorial Legislature as soon as the earliest settlements are made," that "if it be not established he threatens us with Mr. Seward's "irrepressible conflict" between the slave-holding and non-slave-holding sections. Here we have two calumnies bundled up together. Mr. DOUGLAS was not trained in that school of "political heresy" which teaches the omnipotence of legislation. Hence, he has never subscribed, and does not subscribe now, to the pestilent doctrine, "that an unlimited control over private rights" resides anywhere under our free, republican government. He leaves all such offspring of despotism to the nurture and training of such as his reviewer, who seems incapable of appreciating "the blessings of liberty" to "secure" which, "the People of the United States" ordained and established their Constitution. He reveres that Constitution; and holds, that "unlimited control over private rights," or any control over them in conflict with "the great first principles of the social compact," would be a flagrant abuse of legislative power, for which neither the Federal, a State, nor Territorial Legislature can find authority.

As to threatening us with Mr. Seward's "irrepressible conflict," there is not a shadow of truth in the insinuation. Mr. DOUGLAS says no more than that that doctrine, which is denounced in the article in Harper's Magazine, and has been denounced again and again, will, indeed, "become firmly established" should the powers of legislation which are forbidden to Congress, to the State Legislatures, and to the Territorial Legislatures, "ever be held *to include the slavery question*." Out of this his reviewer weaves his story.

The fling at Mr. DOUGLAS of asserting, inferrentially even, that Congress may authorize, because the power is forbidden to Congress, the Councils of Washington City, or the Levy Court of the District of Columbia, "to make an *ex post facto* law, or a law impairing the obligation of contracts," is so weak and so pitiful that it falls short of its object. It is as harmless as a short-aimed arrow from a child's bow.

It is worthy, altogether worthy, of the intellect that conceived this happy idea.

"But *free negroes* and slaves may both find themselves outside of any State jurisdiction and in a Territory where no regulation has yet been made on the subject. *There the Constitution is equally impartial. It neither frees the slave nor enslaves the freeman.* It requires both to remain in *statu quo* until the *status* already impressed upon them by the law of their previous domicil *shall be changed by some competent local authority.* What is competent local authority in a Territory will be elsewhere considered."

That is to say, a State Legislature or a Convention which frames the Constitution of a new State may enslave a "free negro." We, though, in common with many others, we believe that slaves generally are "better off than free negroes," never heard the right to enslave them suggested before, except by some political charlatan whose mind was dwarfed or debased by inhumanity. We have thought that the wholesome doctrine of the Common Law, which stands out prominently in the judicature of Maryland, "*once free always free,*" is that to which men generally hold in all sections of our country.

GARBLING THE RECORD.

Without any preface we shall proceed to make good the charge which our heading conveys, of "garbling the record." The Reviewer takes Mr. DOUGLAS' Report of March 12, 1856, from the Committee on Territories, and from a paragraph on page 39 selects an extract by commencing at line 5 in the middle of a sentence, and ends his extract in the middle of the 5th line from the end of the paragraph, thus mutilating its meaning as well as its words. We will give the entire paragraph, with the omitted lines in italics, so that the garbling may appear more distinct. Here it is:

"*Without deeming it necessary to express any opinion on this occasion in reference to the merits of that controversy, it is evident that the principles upon which it was conducted are not involved in the revolutionary struggle now going on in Kansas; for the reason, that* the sovereignty of a Territory remains in abeyance, suspended in the United States, in trust for the people until they shall be admitted into the Union as a State. In the meantime they are entitled to enjoy and exercise all the privileges and rights of self-government, in subordination to the Constitution of the United States, and in obedience to their organic law passed by Congress in pursuance of that instrument. These rights and privileges are all derived from the Constitution through the act of Congress, and must be exercised and enjoyed in subjection to all the limitations and restrictions which that Constitution imposes. *Hence it is clear that the people of the Territory have no inherent sovereign right under the Constitution of the United States to annul the laws and resist the authority of the Territorial government which Congress has established in obedience to the Constitution.*"

From Mr. DOUGLAS' minority report on the Lecompton Constitution, made February 18, 1858, we have another pretended extract in which the fraud on the text is more unscrupulous than the first essay, thus verifying the adage that "practice makes perfect." The citation commences with a paragraph on page 52 of Rep. No. 82, and gives only six lines, thus suppressing its meaning, and getting rid of the awkward plea for popular sovereignty which it contains. We insert the paragraph with the omitted lines italicised:

"This committee, in their reports, have always held that a Territory is not a sovereign power: that the sovereignty of a Territory is in abeyance, suspended in the United States in trust for the people when they become a State; that the United States, as the trustee, cannot be divested of the sovereignty, nor the Territory be invested with the right to assume and exercise it, without the consent of Congress. *By the Kansas-Nebraska act the people of the Territory were vested with all the rights and privileges of self-government, on all rightful subjects of legislation, consistent with and in obedience to the organic act; but they were not authorized, at their own will and*

pleasure, to resolve themselves into a sovereign power, and to abrogate and annul the Organic Act and Territorial government established by Congress, and to ordain a constitution and State government upon their ruins, without the consent of Congress."

There are ten lines strung on after the word "*Congress,*" in line six of the foregoing paragraph, to take the place of the eight omitted lines which we have supplied. They are attached without an asterisk or any other sign; and to make the quotation more specious the lines which are selected from page 57, to do service with those at page 52 and form a connected paragraph, are cited with the first word, "*but,*" omitted. Here are the sentences cut out from their context on page 57:

"*But* if the proposition be true, that sovereign power alone can institute governments, and that the sovereignty of a Territory is in abeyance, suspended in the United States in trust for the people when they become a State, and the sovereignty cannot be divested from the hands of the trustee and vested in the people of the Territory without the assent of Congress, it follows as an unavoidable consequence that the Kansas Legislature, by the act of February 19, 1856, did not, and could not, confer upon the Lecompton convention the sovereign power of ordaining a Constitution for the people of Kansas in the place of the Organic Law passed by Congress."

This is the gentleman, the fair-spoken, high-toned moralist who is shocked that Mr. DOUGLAS, without a particle of injustice, quoted Mr. Buchanan as saying "that slavery exists in Kansas by virtue of the Constitution of the United States," whereas it was qualified with the preceding words: "It has been solemnly adjudged by the highest judicial tribunal known to our laws." Mr. DOUGLAS quoted Mr. Buchanan fairly, in fact, for the decision of the Court, as the President construed it, was made his own by adoption. Still Mr. DOUGLAS' Reviewer was sorely exercised that the President's opinion was not written out in the very words in which it was expressed.

Cardinal Richelieu, we think, is responsible for the saying, that if he had the privilege of selecting ten lines from an author's books at random, he could have him hanged for treason. Mr. DOUGLAS' Reviewer seems to have taken that witticism for his rule of action. We have only to ask him if he were to make as free with the text of Kent, or Story, or Coke, in the argument of a cause, or with a written instrument of evidence, and detection followed, how long he thinks his name would remain on the roll of attorneys? Does he not know that he would be disbarred "without benefit of clergy" even, if that were now in vogue. We leave him to his moral reflections, and trust that he will be thereby improved, though we confess that there is little faith to be put in a compulsory repentance. He is impaled and cannot escape.

Mr. DOUGLAS, we repeat for the third time, has never held that the Territorial Governments are "sovereign." He only claims that they have the right to legislate, and that "non-interference by Congress" shall be maintained; and in legislating they, of course, exercise an attribute of sovereignty. If their legislation travel without the Constitution, the courts, and not Congress, must determine the question. Not being sovereign, and the power to admit new States being in the discretion of Congress alone, no Territorial Legislature can rightfully authorize a convention to frame a constitution and set up a State government instead of the Territorial.

We have endeavored to "drive the ploughshare of reason, evidence, and truth through the radical delusions" which characterize the "observations" of Mr. DOUGLAS' reviewer. How far we have succeeded others must judge. We may safely say, however, that we have treated his arguments fairly, and if, in dissecting them, the knife has sometimes cut roughly, it must be admitted that the subject justified it. We have, we confess, sometimes used language a little harsh, but it was because harshness was necessary and deserved. Gladly would we have been spared the unpleasant duty of exposing the misrepresentations, garbling, and injustice to which this reviewer has resorted. If, however, men be simple enough to employ such weapons, they must not complain when they are rudely disarmed. It cannot be expected that the serpent's tooth which holds the poison shall be daintily drawn. That, at least, would not be our practice.

We have a few words yet to say before parting with the author of the "Observations," and we shall say them as briefly and as good-naturedly as becomes us. He has furnished us a text in the following sentences:

"He who divides and weakens the friends of the country at such a crisis in her fortunes assumes a very grave responsibility. * * * * * The impulses engendered by the heat of controversy have driven him at different times in opposite directions. We do not charge it against him as a crime, but it is true that these views of his, inconsistent as they are with one another, always *happen* to accord with the interests of the opposition, always give to the enemies of the Constitution a certain amount of 'aid and comfort,' and always add a little to the rancorous and malignant hatred with which the abolitionists regard the Government of their own country."

A year ago there was a great political battle fought in Illinois. The Democracy of that State, save the Federal office-holders and an omibus load of retainers and dependants, who bolted the organization and set up for themselves so as to help the enemy, were led by STEPHEN A. DOUGLAS. The whole country watched the contest with straining eyes and anxious hearts. It was an unequal contest, for the Presidential election of 1856 showed 28,000 majority against the Democratic candidate. Conservative men everywhere took their position with Mr. DOUGLAS and invoked the Democracy of Illinois to stand firmly by their indomitable leader. The South, except where mischief-makers ruled, hoped and prayed for his success. Stephens and Toombs, of Georgia, Green, of Missouri, Orr, of South Carolina, and Brown, of Mississippi, all of them supporters of the Lecompton Constitution, forgot past differences and plead his cause; Wise and Crittenden united with them in doing justice to Mr. DOUGLAS. Do you not think, Mr. Reviewer, that those who looked on that contest "with serene indifference"—such was the language of the "Official Organ"—or those more guilty who gave "aid and comfort" to the Opposition; who wrote letters urging the defeat of Mr. DOUGLAS, and marshalled against him "the enlisted soldiers of the Administration," as Mr. Buchanan called the office-holders, in 1828, do you not think that it is a piece of sublime impudence for such persons to lecture Mr. DOUGLAS, who triumphed despite their malignant assaults, about dividing and weak-

ening the friends of the country? Do you not think that they who thus plotted vainly to put Abraham Lincoln in the Senate deserve to be pilloried for such arrogance? In your conscience you must so think. At all events, outside of the charmed circle in which you move, where truth, being an unwelcomed guest, seldom penetrates, we tell you that the conduct of those who engaged in the treason or encouraged it, not only aroused indignation, but filled the land with scorn and disgust.

When and where has Mr. DOUGLAS been driven "in opposite directions?" When has he ever uttered any opinion different from that which he now holds on the slavery question? Produce the record if you can. Not slurred, twisted, and garbled to fit a dishonest purpose, but true and faithful as he made it. Here is what Mr. DOUGLAS said in the Senate on the 3d day of June, 1850:

"Your bill concedes that a representative government is necessary—a government founded upon the principles of popular sovereignty and the right of a people to enact their own laws; and for this reason you give them a Legislature composed of two branches, like the Legislatures of the different States and Territories of the Union. You confer upon them the right to legislate on 'all rightful subjects of legislation' except negroes. Why except negroes? Why except African slavery? If the inhabitants are competent to govern themselves upon all other subjects, and in reference to all other descriptions of property—if they are competent to make laws and determine the relations between husband and wife, and parent and child, and municipal laws affecting the rights and property of citizens generally, they are competent also to make laws to govern themselves in relation to slavery and negroes." * *

"*I have always held that the people have a right to settle these questions as they choose, not only when they come into the Union as a State, but that they should be permitted to do so while a Territory.* If I have ever recorded a vote contrary to that principle, even as applicable to Territories, it was done under the influence of the pressure of an authority higher than my own will. Each and every vote that I have given contrary to that principle is the vote of those who sent me here and not my own. I have faithfully obeyed my instructions, in letter and in spirit, to the fullest extent."—(*Cong. Globe, part* 2, *pp.* 115, 116.)

We challenge you to find any opinion of Mr. DOUGLAS from that day to this contrary to the opinion of nine years standing. "To the law and to the testimony, if they speak not according to this word, it is because there is no light in them."

But Mr. DOUGLAS' "views always happen to accord with the interests of the Opposition, always give to the enemies of the Constitution a certain amount of 'aid and comfort.'" The same "aid and comfort" exactly which Washington gave the British at Yorktown, and Jackson administered to Packenham at New Orleans. "Aid and comfort" to the Opposition! What next! Why, Sir John Falstaff, with all his wonderful power of invention, never fathered a tale so ludicrous, or so wide of the truth. "A certain amount of aid and comfort" to the enemy, when the staple of every opposition journal in the South is denunciation of the heresies of Mr. DOUGLAS! "Aid and comfort to the enemies of the Constitution!" when Trumbull and Lincoln are denouncing his doctrines in Ohio; Hale and Grow characterizing them as cheats and delusions in Minnesota, and to make the indictment full, the *Washington Constitution*, as a faithful ally, is busily engaged in declaring the "doctrines of Seward MORE SATISFACTORY!"

This thing of adding a "little to the rancorous and malignant hatred with which the Abolitionists regard the Government of their own country" is a high offence and deserves condign punishment. It lies not, however, at Mr. DOUGLAS' door. His skirts are clear.

The burning effigies with which the Abolitionists, "at different times," honored him, attest their appreciation of *his* services. There was something of this kind done a few months ago, with the sanction, if not with the previous advice of those in authority, to which we will refer in this place, that Mr. DOUGLAS' reviewer may give it his attention.

The Abolitionists of Lorain county, Ohio, resisted the federal officers in the execution of the Fugitive Slave Act, rescued a captured slave, and set him at liberty. This was done a year or so ago, at Oberlin. The papers were filled at the time—if we mistake not the "Official Organ" shared in the general indignation, and justly—with denunciations of the "Oberlin Rescuers." Well, those rescuers were indicted, and a trial and conviction of two of them, we believe, had in the Federal Court at Cleveland. Meanwhile the Abolitionists were not idle. They caused the federal officers who had seized the fugitive slave to be indicted under the laws of Ohio for "kidnapping." Thus came a collision between Federal and State authority. Of course the laws of the United States were faithfully executed. Not so fast. A *nolle prosequi* was entered against the Oberlin Rescuers who had not been tried, a general amnesty took place, and there was an "exchange of prisoners" between the United States and the State of Ohio. The United States thus agreed, in consideration of the indictments for "kidnapping" being quashed, to set the "rescuers" free. Now, the question arises, by whose authority was that done? The District Attorney of the United States would not have dared to take the responsibility. Who, then, counselled the act? Let Mr. DOUGLAS' reviewer knock at the door of the Attorney General and inquire for information.

The *Washington Constitution* of August 9, 1859, had an editorial of a column and more of phillipic against the resistance to law counselled by Mr. Giddings in one of his letters to Mr. Corwin, upon which it was commenting. The letter of Mr. Giddings, which gave birth to the "Organ's" article, contains this defiant declaration:

"You further say if men disobey the law [Fugitive Slave Act] you would bring their heads to the block—provided the law should require it. This declaration of hostility to the Republicans generally was unnecessary and unkind. Had it come from a slaveholder, or servile Democrat, it would have excited no attention. *The Republicans of Lorain county trampled upon that law, rescued a fellow-being from slavery, and set him at liberty. They indicted the men who recaptured him, and would have sent them to the penitentiary* HAD NOT THE ADMINISTRATION RECEDED FROM ITS ATTEMPTS TO PUNISH THE RESCUERS AND PERMITTED THE FUGITIVE TO ENJOY HIS FREEDOM. You would bring their heads to the block."

The "Organ" was "red with uncommon wrath," but not a word had it for the testimony which the "octogenarian traitor" filed against the Administration. That is a significant fact. The "Organ" held its peace because it knew, as we knew long before we saw Mr. Giddings' letter, that his was an "o'er true tale." We could not help thinking—rebellious thoughts will sometimes afflict the most loyal—that every syllable which the "Organ" applied to the treasonable doctrines of Giddings would gore the sides of the Administration. We wonder not that Giddings felt emboldened to say, "I am one of that party; detest the fugitive slave law; *I would slay any slave-catcher* who should pollute my residence to recapture a fugitive." He

knows the force of a "*nolle prosequi*," and may, if he should live to carry his threat into execution, reap its benefits, as did his brethren at Oberlin. Mr. DOUGLAS' reviewer, with the aid of the Attorney General, may decide—our opinion is made up, and we cannot sit in the case—whether the "*nolle prosequi*" in Ohio increased or abated "THE RANCOROUS AND MALIGNANT HATRED WITH WHICH THE ABOLITIONISTS REGARD THE GOVERNMENT OF THEIR OWN COUNTRY." Put the question to Giddings. We are done with him, and he is your witness, not ours. You put him on the stand and used his testimony, of which we have made avail.

We shall not stir the dishonored bones of the Lecompton Constitution. The chief argument of the President in its favor was, that "slavery could never be prohibited in Kansas, except by means of a constitutional provision, and in no other manner can this be done so promptly, if a majority of the people desire it, as by admitting it into the Union under the present Constitution."

Mr. DOUGLAS, perfectly indifferent as to whether slavery was legalized in Kansas or not, and not believing that the Constitution was "the legally and fairly expressed will of a majority of the actual residents," opposed the admission of the State. He differed with the advocates of the Lecompton Constitution upon a question of fact *only*, for he was willing, and so said, to waive all irregularities, if he were satisfied that it embodied the popular will. The people of Kansas, on a full vote, by 10,000 majority, vindicated his opinion that it was not their Constitution. It lies in the cesspool of fraud and corruption in which, all now concede, it was engendered; and no false epitaph can reflect dignity or decency on its brief existence, or efface the disgraceful chapters in its history. Senator Hammond, of South Carolina, in a speech at Barnwell Court-house, in that State, October 29, 1858, drew a picture of the measure, which we accept, believing it to be truthful:

"*Through the most disgusting as well as tragic scenes of force and fraud*, the Territory of Kansas at last came before Congress for admission as a State, with what is known as the Lecompton Constitution, embodying slavery among its provisions. But at the same time the convention, by an ordinance, demanded of the United States some twenty-three millions of acres of land, instead of the four millions usually allowed to new States containing public lands. *It was almost certain that a majority of the people of Kansas were opposed to this Constitution*, but would not vote on it; and this additional nineteen millions, which, if allowed, would probably have kept them again from the recent polls, was what the South was expected to pay for that worthless slavery clause, which would have been annulled as soon as Kansas was admitted.

"*I confess my opinion was, that the South herself should kick that Constitution out of Congress.* But the South thought otherwise. When the bill for its adoption was framed with what is called the Green Proviso, *I strenuously objected to it, and felt very much disposed to vote against the whole*, but again gave up to the South, which accepted it by acclamation. * * * * * * * * * * * * * * *

"The only principle involved in this whole Kansas affair, if *an affair so rotten from beginning to end can have a principle at all*, was this: Would Congress admit a slave State into the Union? The Senate said yes. The House, by adopting the Crittenden substitute, said yes, if we are assured that a majority of the people of the State are in favor of it. For this substitute all the opposition voted in both Houses, so that *every member of Congress, of all parties, first and last, committed themselves to the principle and policy that a State should be admitted into the Union with or without slavery, according to the will of its own people; thus re-enacting one feature of the Kansas and Nebraska bill.* I should myself have been willing to rest here and let Kansas rest also. Whatever there was of principle or honor in the matter was secured by the votes already given."

* * * * * * * * * * *

"The people of Kansas have, by an overwhelming majority, rejected the land ordinance, as modified by Congress, and refused to come into the Union on such terms. Be it so. It is what I suspected, what I rather desired. It sorts precisely with what I felt when I saw Kansas thrust herself into Congress, and demand, REEKING WITH BLOOD AND FRAUD, to be enrolled among the States."

Upon that rehearsal of its merits, by a South Carolina senator who voted for the admission of Kansas thereunder, Mr. DOUGLAS may contentedly rest his opposition to the Lecompton Constitution. And here we wish it to be noted that the *Washington Union*, whose columns were burdened for months and months with denunciations of Mr. DOUGLAS for his opposition to that constitution, published Senator Hammond's speech in its issue of November 11, 1858, without one word of dissent or reproach. Indeed, the "Organ" of that date, and the 16th of the same month, lauded it highly.

"What is there now to excuse any friend of peace for attempting to stir up the bitter waters of strife?" What is there, Mr. Reviewer, we repeat your question, to excuse such conduct? Why, if you want harmony and success, why is the war upon Mr. DOUGLAS kept up unceasingly by almost every press in the interest of the Administration? Why is he maligned and hunted by almost all the federal officials, and his friends or any man who dares to do him common justice ruthlessly proscribed? Is not the Democratic organization of almost every free State in the Union firmly tied to his doctrine of popular sovereignty? Can a man with such a power behind him—a power which can ride roughshod over all the office holders in the land, and make and unmake Presidents—be cut off from Democratic communion? Why, then, is he villified in the "Official Organ" as an "arch mischief maker," because, in obedience to the summons of the Democracy of Ohio, he makes speeches in that State in harmony with their platform—principles which he has always espoused, and to which the Democratic candidates are pledged? Why is there collected into the same "Official Organ" all the denunciations by whomsoever uttered, by Fire-eater, by South American, by Republican, or by Abolitionist—all are welcome—which are launched at Mr. DOUGLAS? What is the height of his offending? IT IS THE SUCCESSION, IT IS THE SUCCESSION, THE SUCCESSION! "There's the rub." It is not Lecompton, nor anti-Lecompton; it is not the Dorr letter, nor yet the article in Harper. It is the danger which threatens that Mr. DOUGLAS' colors may be run up at Charleston. That is the kernel of all this strife; these other things are but the convenient shell to hide it from inexperienced and unsuspecting eyes. Let Mr. DOUGLAS say that he will not accept, if it should be tendered, "the presidential nomination," for which, the "Official Organ" says, he is "now appealing so earnestly," and the bitter waters will neither flow nor be stirred in his neighborhood. The "Organ" and all its followers will look upon him then "with serene indifference" indeed.

Mr. DOUGLAS has made no new issue, nor thrust an issue "upon us to disturb the harmony" and "threaten the integrity" of the party. He is the assailed, not the assailant. He has done no more than remain steadfast to his opinions, instead of being "tossed to and fro, and carried away by every wind of doctrine." He has refused to fol-

low "blind guides," or remodel his opinions to suit false and shifting teachers. He is, therefore, arraigned and to be put down for hostility to the South at the bidding of men whom he covered with his shield as he fought in the front ranks to defend the South against "the enemies of the Constitution." That is the issue now, which, with some people, has swallowed up all other issues. It will be met, and the real disturbers of Democratic harmony, North and South, though they rally in triumph, will be scattered in confusion. As a fit conclusion to our remarks we will reproduce here what Mr. Buchanan said in the Senate, in January, 1838, on Mr. Calhoun's State Rights resolutions, as appropriate to the new issues which are thrust upon us from time to time. He said:

"The fact is, and it cannot be denied, those of us in the Northern States who have determined to sustain the rights of the slave-holding States at every hazard, are placed in a most embarrassing situation. *We are almost literally between two fires;* whilst in front we are assailed by *the Abolitionists, our own friends in the South are constantly driving us into positions where their enemies and our enemies may gain important advantages.* LET US, THEN, SACRIFICE FORMS IF WE CAN OBTAIN THE SUBSTANCE."—(*Cong. Globe, Append.*, 1*st sess.* 25*th Cong.*, *p.* 31.)

Those were words of wisdom when they were spoken, and are as much so now. They give counsel to which we cheerfully respond. May all others profit by them.

That Mr. DOUGLAS is "literally between two fires" is certain. The Abolitionists assail him in front, the southern agitators, who are content with nothing but absolute submission to all their demands, assail him in the rear. He will survive both fires, and have his day of triumph as surely as truth has a home and justice a throne in the hearts of the American people.

WASHINGTON, *October*, 1859.

APPENDIX.

We had finished reading "proof," and thought that we were fairly out of the hands of the printer, when we received reliable information that Mr. DOUGLAS' reviewer was preparing a reply to his speech at Wooster, Ohio. We determined, therefore, to await its coming. We had not to wait long, for the *Constitution* of the 6th instant presented to the public an "Appendix to Judge Black's Pamphlet," thus fixing the authorship of the "Observations," which we have endeavored to review, on the Attorney General of the United States.

I. The reviewer complains that Mr. DOUGLAS charges him with entertaining the opinion that all the States in the Union "may confiscate private property," a charge which he indignantly denies. Let us see what his opinions really are. The pamphlet says:

"It will also be agreed *that the people of a State, through their Legislature*, and the people of a Territory, in the constitution which they may frame preparatory to their admission as a State, can regulate and control the condition of the subject black race within their respective jurisdictions, *so as to make them bond or free.*

"But here we come to the point at which opinions diverge. Some insist that no citizen can be deprived of his property in slaves, or in anything else, *except by the provision of a State constitution* or by the act of a State Legislature; while others contend that an unlimited

control over private rights may be exercised by a Territorial Legislature as soon as the earliest settlements are made."—(Page 8.)

First ascribing to Mr. DOUGLAS strong sentiments "in favor of the latter doctrine," the pamphlet then continues:

"On the other hand, the President, the judges of the Supreme Court, nearly all the Democratic members of Congress, the whole of the party South, and a very large majority North, are penetrated with a conviction that no such power is vested in a Territorial Legislature, and that *those who desire to confiscate private property of any kind must wait until they get a constitutional convention or the machinery of a State government into their hands.*"

Again, on page 10, referring to slaves as a "species of property which is of trancendent importance to the material interests of the South," and "guaranteed to the owner as much as any other property is guaranteed by the Constitution," he asserts that "Mr. DOUGLAS thinks that a Territorial Legislature is competent to take it away." He then adds: "We say, no; the *supreme legislative power of a sovereign State alone can deprive a man of his property.*" He further says that Mr. DOUGLAS "claims for the Territorial governments the right of *confiscating* private property on the ground that those governments are sovereign—have an uncontrollable and independent power over all their internal affairs." In other words, he charges Mr. DOUGLAS, in holding to the power of a Territorial Legislature to exclude or inhibit slavery, with contending for the right in a Territorial government to "*confiscate* private property," although he agrees that "the people of a State, through their Legislature," may "regulate and control the condition of the subject black race" as they please. Thus, according to his new theory, that which is "confiscating private property" in a Territorial Legislature is another and a contrary thing in a State. We have shown, in the body of this paper, that to exclude or inhibit or abolish slavery is neither to confiscate property nor to deprive a man of his property, and that the power to do either, unless there be a constitutional restriction, belongs to a State Legislature, as Mr. DOUGLAS' reviewer admits. We shall not discuss the point, therefore, in this place, especially as the most common understanding can discern the absurdity of the pamphleteer's position. To state it is to refute it. A State Legislature, or a Territorial convention, in framing a constitution, may exclude or abolish slavery without any confiscation; but if a Territorial government does either, it "confiscates private property."

Again, on page 16, the pamphlet says:

"It is also acknowledged that *the people of a new State*, either in their constitution or in an act of their Legislature, may make the negroes within it free, or hold them in a state of servitude."

The public will judge, in view of the extracts which we give from his "Observations," whether the complaints of the reviewer against Mr. DOUGLAS are well founded.

II. The "Appendix" to the "Observations" states the position of Mr. DOUGLAS' reviewer as follows:

"The Territories *must wait* till they become sovereign States *before* they *can confiscate property:* that was our position."

"That the government of a sovereign State, *unrestricted and unchecked by any constitutional prohibition*, would have power to confiscate private property, even without compensation to the owner, is a proposition which will scarcely be denied by any one who has *mastered the primer of political science.* Sovereignty, which is the supreme authority of an independent State or government, is in its nature irresponsible and absolute."

Here is another plea for that omnipotence of the legislative power which the "Observations" so stoutly maintains. We shall not stop to inquire whether we have "mastered the primer of political science" or not, nor do we care to weigh the authority of such great names as Vattel, Locke, William Pitt, and Lord Thurlow against mere assertion. We prefer to meet this plea for omnipotent legislative power, which has no tolerance or standing anywhere except under a despotism, by an appeal to the judicial decisions of the country. We have elsewhere produced the opinion of Justice Chase, of the Supreme Court, in Calder *vs.* Bull, (3 *Dall.*,) of Chief Justice Marshall, in Fletcher *vs.* Peck, (6 *Cranch*,) and of Justice Story, in Leland *vs.* Williamson, (2 *Peters*,) each in flat contradiction of the doctrine which is now announced for our acceptance. The same condemnation of this doctrine will be found, also, in the opinion of Chief Justice Buchanan, in The Regents of the University of Maryland *vs.* Williams, (9 *Gill & John*, 408,) of Justice Bronson, in Taylor *vs.* Porter, (4 *Hill*, 146,) of Senator Tracy, in Bloodgood *vs.* The Mohawk and Hudson Railroad Company, (18 *Wend.*, 56,) of Chancellor Walworth, in Varick *vs.* Smith, (5 *Paige*, 159,) of Justice Hosmer, in Goshen *vs.* Stonington, (4 *Connecticut Rep.*, 229,) and of Justice Comstock, in Wynehamer *vs.* The People, (3 *Kernan.*)

These are the names of noted jurists; some of them exist no more, but the fame of their judicial learning survives. All of these eminent men, we make bold to say, *had* "mastered the primer of political science" when their opinions were put upon record. To these we can add another name not yet without authority in this land—the name of Daniel Webster. His argument before the Supreme Court, in Leland *vs.* Williamson, scouts the heresy, that, where the Constitution imposes no special restraint, the Legislature of a State may "confiscate private property." His great mind stooped to no such fallacy. He planted himself upon the broad principle, to which the opinion of the Court conforms, that the genius and character of our institutions, and the great purposes for which they were established, in the absence of any other, act as a check upon and restrain legislation. Others may be joined to their idols, but, with due deference, we have more faith in Marshall, and Story, and Webster, to say nothing of others of high reputation, than in the Attorney General and his followers, who have "forsaken the fountain of living waters, and digged to themselves broken cisterns."

"Now, what is the constitutional prohibition which can anywhere be found to restrain 'Popular Sovereignty in the Territories' (if there be such a thing there) from confiscating any citizen's property? There is none."

This is intended, doubtless, for a hard question—an unanswerable question. We see no difficulty in it. The legislative power of the Territories extends to "all rightful subjects of legislation consistent with the Constitution of the United States." To confiscate private property is not consistent with that instrument—is not a rightful subject of legislation, that we are aware of; nor does the case of Barron *vs.* The City of Baltimore, (7 *Peters*,) should such an abuse of legislative power be attempted, debar the courts from declaring a law of that character null and void. The decision in that case, with all

proper respect to the Attorney General, has nothing whatever to do with the point he makes. But, as we must hurry on, we will so concede to avoid argument, and tell him that, if there were no provision in the Federal Constitution to prohibit the confiscation of private property, nor any restriction in the Organic Act, a Territorial Legislature could not, as he assumes, flagrantly subvert the fundamental principles of the social compact. Who believes that Congress, even if the fifth amendment had not been adopted, could deprive a man of his property, or take private property for public use without just compensation, without violating the Constitution, and trampling down the objects for which it was established. The framers of the Constitution did not yield to any such startling theory, and the Supreme Court, in language as clear as can be used, in Leland *vs.* Williamson, put the brand of heresy upon this idea of omnipotence in legislation. To exclude or inhibit slavery by a Territorial enactment, we must again insist, is *not* confiscation of property, nor depriving a man of his property within the meaning of the Constitution. And it can be made so no more by so calling it than a woman can be unsexed by repeatedly calling her a man.

III. It will be intelligence as welcome as it is new to Municipal Corporations, that "there is, probably, no city in the United States whose powers are not larger than those of a Federal Territory." The city governments, according to this, may grant chartered privileges, may declare what shall constitute felony or misdemeanor; may regulate the ownership, transfer, and descent of property; may fix the relation of husband and wife, parent and child, master and servant, and establish courts with jurisdiction in all cases of law and equity—for these and many other like powers are within the "rightful subjects" of Territorial legislation. We have never heard of a municipal corporation with powers quite so large; has Mr. DOUGLAS' reviewer?

But "the people of a city elect their own mayor, and, directly or indirectly, appoint their municipal officers," while "the President appoints the chief executive of a Territory as well as the judges." They are so appointed, because the Constitution does not provide any such tenure of federal office as election. How or in what manner does this narrow or destroy the legislative power which the Organic Act spreads over all rightful subjects, without any restriction or limitation whatever as to slavery? We cannot see.

IV. "Indeed, there is no judge of any grade or character, nor any writer on law or government, who has ever asserted or given the least countenance to this *notion* of *popular* or any other kind of *sovereignty in the Territories*."

From the foundation of the government to the legislation of 1850 the Territories were governed like dependant colonies. Congress exercised plenary power over them without question, and inhibited or tolerated slavery at will. The Compromise measures inaugurated a new policy, and the Territories were thenceforth no longer thralls. Their right of self-government was then admitted, and every effort—and there were several—to hamper them with restrictions as to slavery was voted down. They are free to legislate now upon that and all other subjects within the limits of the Constitution. That is sovereignty, says Mr. DOUGLAS' reviewer, and no Territorial government

is "sovereign." Clearly not; for there is no such thing as sovereignty, which implies supreme power, absolute and uncontrolled, under our form of government. With us power is everywhere limited and defined. Sovereignty in the Territories haunts the reviewer, for the simple reason that, some how or other, he fails to comprehend that a Territorial government may, and necessarily must, as those governments are now constituted, legislate, and that therein is an attribute of sovereignty. It does not need a judge, nor yet a writer on law or government, to settle that point. It is self-evident and beyond dispute. Therefore, there is nothing in the continual outcry about Territorial sovereignty; neither Mr. DOUGLAS nor anybody else, we believe, has ever asserted it.

The next charge at Mr. DOUGLAS is in this form:

"Again: Mr. DOUGLAS, in his speech at Cincinnati, made so lately as the 9th of September last, used the following unmistakable language:

" 'Examine the bills and search the records, and you will find that the *great principle* which underlies those measures (the Compromise of 1850) is the *right* of the people of *each State, and each Territory* WHILE A TERRITORY, to DECIDE the slavery question for themselves.'

"Is not this claiming sovereignty for the Territories? Can this slavery question be *decided* without legislating upon the right of property? Can a subordinate government do that?"

That is precisely what Mr. Cass and Mr. Toucey have claimed for the Territories, precisely what Mr. Cobb has admitted that the people of a Territory may do; yet neither of those distinguished statesmen, nor fifty others who maintained the same position, ever dreamed, we think, that therein the Territories are "sovereign." How slave property can be protected in a Territory without "legislating upon the right of property" is incomprehensible; yet that is a power which, we supposed, none but the Republicans questioned. It seems, however, that the reviewer considers slavery a forbidden subject of legislation; at least we so understand him. Be this as it may, if to legislate "upon the right of property" be beyond the power of a Territorial government, it will be impossible to legislate in many cases at all; for legislation in numerous instances, as in acts regulating conveyances, and the transfer and descent of real and personal estates, touches the right of property. Again: if a Territorial government may not legislate as to slavery, may not decide the question, then it may not rightfully legislate at all; for there is and can be no act of legislation under the Organic Act which is not clearly an element of sovereignty.

The difficulty is not in Mr. DOUGLAS' opinions, but in the pertinacity with which they are misunderstsood or misconstrued. We do not deem it necessary to reply *seriatim* to the points of his reviewer under this head, and shall, therefore, be content with repeating, that the right to "form and regulate their domestic institutions in their own way," which Congress conferred on the Territories, without any exception as to slavery, carries with it the highest attribute of sovereignty, and that it has no other limit than the Constitution, to which Congress and the States are alike subject. We will add, that if the Attorney General will look into the debates on the Kansas-Nebraska bill, in 1854, and on Kansas affairs in 1856, he will find that Mr. Brown, of Mississippi, Mr. Breckinridge, of Kentucky, Mr. Clingman, of North Carolina, Messrs. Stephens and Toombs, of Georgia, Mr. Pettit, of

Indiana, Mr. Bigler, of Pennsylvania, Messrs. Samuel A. Smith and Geo. W. Jones, of Tennessee, Mr. Branch, of North Carolina, Mr. Orr, of South Carolina, Mr. Mason, of Virginia, Mr. Benjamin, of Louisiana, and many others, North and South, distinctly affirmed, as Mr. DOUGLAS affirmed and now affirms, that the whole question as to slavery in the Territories was submitted to the people therein for their decision.

V. In the effort to draw a distinction between the existence and establishment of slavery, the "Appendix" says:

"The Constitution does not establish Christianity in the Territories; but Christianity exists there by virtue of the Constitution; because when a Christian moves into a Territory, he cannot be prevented from taking his religion along with him, nor can he afterwards be legally molested for making its principles the rule of his faith and practice."

We had supposed that Christianity is an institution of, and exists under the divine law, and in no way dependent upon the Constitution. "We live to learn," however, and if Christianity does exist in the Territories "by virtue of the Constitution," so, to the same extent as is here claimed, does the religion of the Turk and the Mormon, inasmuch as it is equally impartial to all religions. Will he contend that the Turk or the Mormon, with a plurality of wives as a part of the religious system of each, cannot be "legally molested for making its principles the rule of his *faith and practice*" in the Territories? Will he say that the local law cannot restrict a man to one wife, and shut out polygamy? He dare not mount such a gross absurdity, much as he has already ventured. Yet this brings us to the point, that a Territorial Legislature may in that case interfere with or dissolve the marriage relation—may put away a man's wives—and justly, but may not legislate upon the subject of slavery, so as to decide it. A Mormon has a right to go into a Territory other than Utah, but his marital relations involving polygamy are subject to the local law; so the slave owner may go, subject to the same restraint and condition.

VI. "Whether the relation of master and slave exists or not is a question which must be determined according to the law of the State in which it was created; but the respective rights and obligations of the parties must be protected and enforced by the law prevailing at the place where they are supposed to be violated."

The first part of this proposition is a repetition in another form of the "axiomatic principle of public law" upon which the pamphlet lays such stress. It is intended as an additional prop to the theory that the law of the particular State whence the owner immigrates accompanies him into the Territory, and determines all questions as to slaves and slavery therein. We have already said all that we wish to say thereon; it may, therefore, pass. With respect to the second part of this proposition, that "the rights and obligations" of the master and slave "must be protected and enforced by the law prevailing" in the Territory, we would respectfully inquire, if the legislature should provide no "judicial remedies," how "the respective rights and obligations of the parties" can be protected and enforced? That is the pregnant question in which the South, or that portion of the South which claims a "federal slave code," is interested. We do not see but that it is here abandoned, and that everything is abandoned to the principle of "non-action," which is as fatal to

slavery in the Territories as "unfriendly legislation." How "judicial remedies" can be secured without legislation is a problem which we cannot solve, nor have we known it to be solved ever.

With this hasty glance at the leading points of the "Appendix," we have no hesitation in agreeing with the *Constitution*, that "it *is* marked by the same force of thought, closeness of reasoning, and felicity of expression which characterized the pamphlet." Our better judgment is, however, that the mass of intelligent readers, whatever their respect for the official station of their author, will accord to neither production any high degree of excellence in those respects. Enlightened public opinion is not fashioned or moulded so easily nowadays as some people imagine. So believing, and with an abiding confidence in truth, and no wish to do injustice in any quarter, we shall leave that public opinion to decide as to the merits of this controversy, which, we are free to say, should never have been provoked.

WASHINGTON, *October*, 1859.